

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,)
6)
7 vs.)
8)
9 MICHAEL J. MISKE, JR.,)
10)
11 Defendant.)
12)
13 _____)

14 TRANSCRIPT OF JURY TRIAL (DAY 13)
15 BEFORE THE HONORABLE DERRICK K. WATSON,
16 CHIEF UNITED STATES DISTRICT COURT JUDGE

17 APPEARANCES:

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300 Ala Moana Boulevard
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1 January 29, 2024 8:28 a.m.

2 (Open court out of the presence of the jury.)

08:28AM 3 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

08:28AM 4 States of America versus Michael J. Miske, Jr.

08:28AM 5 Counsel, please make your appearances for the record.

08:29AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

08:29AM 7 Michael Nammar, KeAupuni Akina for the United States. Also

08:29AM 8 present is Kari Sherman, and FBI Special Agent Thomas Palmer.

08:29AM 9 THE COURT: Good morning.

08:29AM 10 MR. KENNEDY: Good morning, Your Honor.

08:29AM 11 THE COURT: Good morning.

08:29AM 12 MR. KENNEDY: Michael Kennedy with Lynn Panagakos,

08:29AM 13 Michael Miske, and we are here with Ms. King.

08:29AM 14 THE COURT: All right. Good morning to all of you as

08:29AM 15 well. You may be seated.

08:29AM 16 Just to speak with you all just very briefly this

08:29AM 17 morning before we bring the jury in, because there is an update

08:29AM 18 with respect to Juror Number 11, the cause of us going dark on

08:29AM 19 Friday, as you may recall.

08:29AM 20 So we did receive an update from both her and her

08:29AM 21 physician. As is typical with physician notes, it's not very

08:29AM 22 illuminating. In fact, I'll just read it to you because it's

08:29AM 23 so short.

08:29AM 24 "This is to certify that Juror Number 11 is under my

08:29AM 25 professional care, was unable to attend jury duty due to a

08:30AM 1 recent motor vehicle accident which occurred on January 26th."

08:30AM 2 Things that we obviously already know, and there are
08:30AM 3 about seven more words, so you can tell how much this letter
08:30AM 4 illuminates our situation.

08:30AM 5 "She may return to jury duty on February 5th." So
08:30AM 6 that's the entirety of the letter.

08:30AM 7 Ms. Williams did also elaborate in a separate email to
08:30AM 8 the same effect. She provided additional details. She was
08:30AM 9 rear-ended on the date in question. She continues to suffer
08:30AM 10 both back and neck pain as well as headaches. She is on
08:30AM 11 medication that makes her drowsy, and she is not able to turn
08:30AM 12 her neck or to sit for any extended period of time. And said
08:30AM 13 she -- in fact, she said that she's been spending the majority
08:30AM 14 of her day in bed.

08:30AM 15 In light of the one-week delay that continuing on the
08:31AM 16 jury would result in -- and at that point I imagine she would
08:31AM 17 need to be reevaluated, not immediately then coming into court,
08:31AM 18 I don't think that's automatic -- my suggestion is that we
08:31AM 19 excuse her. I don't think we can afford the one-week delay
08:31AM 20 that she is asking for at a minimum.

08:31AM 21 Thoughts?

08:31AM 22 MR. INCIONG: We agree, Your Honor. I think that's
08:31AM 23 really the only logical choice at this point.

08:31AM 24 MR. KENNEDY: Agree, Your Honor.

08:31AM 25 THE COURT: All right. Then we'll excuse Ms. Williams

08:31AM 1 from further participation. All of the alternate jurors will
08:31AM 2 then move up one spot. Alternate Number 1, Mr. Ott, would then
08:31AM 3 move into a deliberating and voting role, with every other
08:31AM 4 alternate moving up one -- one slot from 2 to 1, 3 to 2,
08:31AM 5 etcetera.

08:31AM 6 Okay. With that, any other issues? Otherwise, we'll
08:31AM 7 get the jury in and the witness to retake the stand.

08:32AM 8 MR. INCIONG: No, Your Honor.

08:32AM 9 MR. KENNEDY: None, Your Honor.

08:32AM 10 THE COURT: All right. I hope everyone was able to
08:32AM 11 take advantage of the extra day that we got.

08:32AM 12 Let's go ahead and bring the jury in.

08:32AM 13 And the witness may retake the stand.

08:34AM 14 (In open court in the presence of the jury:)

08:34AM 15 THE CLERK: Criminal Number 19-00099-DKW-KJM, United
08:34AM 16 States of America versus Michael J. Miske, Jr.

08:34AM 17 This case has been called for jury trial, Day 13.

08:35AM 18 Counsel, please make your appearances for the record.

08:35AM 19 MR. INCIONG: Good morning, Your Honor. Mark Inciong,
08:35AM 20 Michael Nammar and KeAupuni Akina for the United States. Also
08:35AM 21 present with us again is Special Agent Thomas Palmer and Kari
08:35AM 22 Sherman.

08:35AM 23 THE COURT: Good morning.

08:35AM 24 MR. KENNEDY: Good morning, Your Honor. Michael
08:35AM 25 Kennedy with Lynn Panagakos, Michael Miske, and Ashley King is

08:35AM 1 assisting us today.

08:35AM 2 THE COURT: All right. Good morning to all of you.

08:35AM 3 You may be seated.

08:35AM 4 And good morning. I hope you all had a good weekend,

08:35AM 5 was able to enjoy the Friday bonus that we got last week. So

08:35AM 6 you were able to turn it into a hopefully three-day weekend and

08:35AM 7 recharge a little bit. I know last -- last week was likely a

08:35AM 8 little bit of a long one. It's our first week of evidence. It

08:35AM 9 tends to have that effect on most people.

08:35AM 10 So good morning to the 17 of you who have appeared

08:35AM 11 this morning. One thing that stands out I imagine in all of

08:35AM 12 your minds is the absence of Juror Number 11. I'll say just a

08:36AM 13 little bit about that situation without going into too much

08:36AM 14 detail.

08:36AM 15 She is okay. It's not life-threatening or anything

08:36AM 16 along those lines, anything approximating that. Nonetheless,

08:36AM 17 she is not able to rejoin this trial. Her departure would have

08:36AM 18 been at least a week, if not more, and there was some

08:36AM 19 uncertainties surrounding that.

08:36AM 20 So the parties at the Court's recommendation have

08:36AM 21 agreed to excuse her from further service. What that means,

08:36AM 22 this is why we have alternates, and this is in addition to why

08:36AM 23 we ask our alternate jurors to pay as close attention to what's

08:36AM 24 going on to the evidence, to the witnesses as anyone else on

08:36AM 25 the jury, because of moments just like this.

08:36AM 1 So what we're going to ask -- you can all remain where
08:36AM 2 you are for the time being.

08:36AM 3 But at the next break, Mr. Ott, you are the first
08:36AM 4 alternate. You will move up -- and rather than have
08:36AM 5 Ms. Yoshiyama move over, what we'll just do is have you sit in
08:37AM 6 Juror Number 11's seat so that there is not a mass shuffling.

08:37AM 7 All of the other alternates will then move up. Number
08:37AM 8 3 -- Number 2 will become Alternate 1, Number 3 will become
08:37AM 9 Alternate 2, etcetera. Okay?

08:37AM 10 Hopefully that's not confusing at all.

08:37AM 11 Bottom line, continue to pay as close attention to the
08:37AM 12 proceedings as you all have been up to now, and we'll just be
08:37AM 13 fine.

08:37AM 14 Okay. And we wish Ms. Williams of course a speedy
08:37AM 15 recovery, and I have no doubt that she will get there. It just
08:37AM 16 won't jibe with the timetable that we have here for this
08:37AM 17 proceeding.

08:37AM 18 Okay. So with that, I remind you where we were when
08:37AM 19 we adjourned on Thursday afternoon. Mr. Kimoto was on the
08:37AM 20 witness stand. Mr. Kennedy, who is just now standing up and
08:37AM 21 taking the podium, had begun his cross-examination of
08:37AM 22 Mr. Kimoto, and that is where we will resume.

08:37AM 23 Mr. Kennedy, when you're ready.

08:37AM 24 MR. KENNEDY: Thank you, Your Honor.

08:37AM 25 PRESTON KIMOTO,

08:38AM 1 (Resumed the stand.)

08:38AM 2 RESUMED CROSS-EXAMINATION

08:38AM 3 BY MR. KENNEDY:

08:38AM 4 Q Sir, I want to pull up what's been marked as Exhibit 5-24

08:38AM 5 for you to take a look at it.

08:38AM 6 MR. KENNEDY: Your Honor, I believe we have a

08:38AM 7 stipulation that it's admissible that was filed I believe last

08:38AM 8 evening.

08:38AM 9 THE COURT: Yes, 5-24 pursuant to the parties' second

08:38AM 10 stipulation filed on January 28th is admitted.

08:38AM 11 (Exhibit 5-24 was received in evidence.)

08:38AM 12 MR. KENNEDY: And it's a video clip without audio, and

08:38AM 13 if we can move to --

08:38AM 14 THE COURT: Play it? Yes, you may.

08:38AM 15 (Videotape was played for the jury.)

08:38AM 16 BY MR. KENNEDY:

08:38AM 17 Q Sir, do you recognize the truck that the jury can see in

08:38AM 18 Exhibit 5-24?

08:38AM 19 A Yes.

08:38AM 20 Q Whose is it?

08:38AM 21 A That is my truck.

08:38AM 22 Q All right. And we're on October 17, 2017, at 4:03 p.m.?

08:39AM 23 A Yes.

08:39AM 24 Q You've walked into the office?

08:39AM 25 A Yes.

08:39AM 1 Q And so I want to compare that now, and let's go to 5-24-A.

08:39AM 2 And this is a still shot of you, it looks at 4:03:35 p.m. on

08:39AM 3 October 17, 2017, correct?

08:39AM 4 A Yes.

08:39AM 5 Q Now, I want to compare that now to the timeline on the

08:39AM 6 phone, Mr. Miller and you.

08:39AM 7 MR. KENNEDY: If we could pull up Exhibit 5-37, which

08:39AM 8 is in evidence, Your Honor, and publish it to the jury.

08:39AM 9 THE COURT: You may.

08:39AM 10 BY MR. KENNEDY:

08:39AM 11 Q If we go to the last page, since this is in reverse order,

08:40AM 12 page 6, there are no texts from Mr. Miller to you at this time

08:40AM 13 at 4:02 p.m. to 4:04 p.m., correct?

08:40AM 14 A Yes.

08:40AM 15 Q And so the first text from Miller to you is at 5:21:49,

08:40AM 16 correct?

08:40AM 17 A Correct.

08:40AM 18 Q All right.

08:40AM 19 MR. KENNEDY: I want to move to Exhibit 5-25, which is

08:40AM 20 also a video clip that is stipulated, Your Honor.

08:40AM 21 THE COURT: Yes, it is part of yesterday's

08:40AM 22 stipulation, and so the 5-25 is admitted. You may publish.

08:40AM 23 (Exhibit 5-25 was received in evidence.)

08:40AM 24 BY MR. KENNEDY:

08:40AM 25 Q All right. And so we're at 4:13 p.m.?

08:40AM 1 A Correct.

08:40AM 2 Q So this is roughly ten minutes after you entered the

08:40AM 3 office?

08:40AM 4 A Yes.

08:40AM 5 Q And you're leaving the office in your truck.

08:40AM 6 A Correct.

08:40AM 7 Q And so this is on October 17, 2017?

08:41AM 8 A Yes.

08:41AM 9 Q All right. And if we go to 5-25-A, and this is a

08:41AM 10 screenshot of you getting into your truck at 4:13?

08:41AM 11 A Correct.

08:41AM 12 Q In the afternoon and leaving the office, right?

08:41AM 13 A Yes.

08:41AM 14 Q All right. If we move to Exhibit 5-37, that last page.

08:41AM 15 Once again, this is now -- there are no texts from Miller at

08:41AM 16 this point, correct?

08:41AM 17 A Correct.

08:41AM 18 Q The first text appears to be at 5:21:49 on that day,

08:42AM 19 October 17, 2017, correct?

08:42AM 20 A Yes.

08:42AM 21 Q All right.

08:42AM 22 MR. KENNEDY: Now, I want to move to Exhibit 5-27,

08:42AM 23 which is also a video clip that is stipulated, and I would ask

08:42AM 24 that it be published.

08:42AM 25 THE COURT: Yes, pursuant to the stipulation, the

08:42AM 1 referenced Exhibit 5-27 is admitted, and, yes, you may publish.

08:42AM 2 (Exhibit 5-27 was received in evidence.)

08:42AM 3 BY MR. KENNEDY:

08:42AM 4 Q All right. At this time you're gone in your truck, right?

08:42AM 5 A Yes.

08:42AM 6 Q All right. Do you see an individual in the white shirt

08:42AM 7 walking away?

08:42AM 8 A Yes.

08:42AM 9 Q That's Mr. Miske, correct?

08:42AM 10 A Correct.

08:42AM 11 Q He's walking out of the office across the way, correct?

08:43AM 12 A Yes.

08:43AM 13 Q This is at 4:30, correct?

08:43AM 14 A Yes.

08:43AM 15 Q About 15 minutes after you left in your truck, correct?

08:43AM 16 A Correct.

08:43AM 17 Q All right. And if we move to 5-27-A, this is a screenshot

08:43AM 18 of Mr. Miske walking out of the office across the street,

08:43AM 19 correct?

08:43AM 20 A Yes.

08:43AM 21 Q All right. Once again, if we look at Exhibit 5-37,

08:43AM 22 page 6, this is almost 15 minutes before Mr. Miller sends you

08:43AM 23 his first text, correct?

08:43AM 24 A Yes.

08:43AM 25 Q 4:30:25, he's walking across the street, and the first

08:43AM 1 text is at 5:21:49, correct?

08:43AM 2 A Yes.

08:43AM 3 Q All right.

08:43AM 4 MR. KENNEDY: Let's move to Exhibit 5-28, which is a
08:43AM 5 video clip also pursuant to the stipulation, Your Honor.

08:43AM 6 THE COURT: Yes, go ahead.

08:43AM 7 BY MR. KENNEDY:

08:43AM 8 Q This is at 5:35:45?

08:44AM 9 A Yes.

08:44AM 10 Q You see Mr. Miske returning to the office, correct?

08:44AM 11 A Correct.

08:44AM 12 Q This is now about an hour after he left, actually an hour
08:44AM 13 and five minutes, 5:35, correct?

08:44AM 14 A Yes.

08:44AM 15 Q We saw him walk out at 4:30, correct?

08:44AM 16 A Correct.

08:44AM 17 Q So an hour and five minutes later?

08:44AM 18 A Yes.

08:44AM 19 Q If we move to 5-28-A, this is a screenshot of him walking
08:44AM 20 right at 5:35:43, correct, on October 17, 2017?

08:44AM 21 A Yes.

08:44AM 22 Q All right. At this point I want to compare it to
08:44AM 23 Exhibit 5-37, page 6. It's at 5:21:49 when Miller texts you,
08:44AM 24 "Yo," right?

08:44AM 25 A Yes.

08:45AM 1 Q At 5:33:41, he texts you, "Call me ASAP," two exclamation
08:45AM 2 points, correct?

08:45AM 3 A Correct.

08:45AM 4 Q The first one is 14 minutes before we see Mr. Miske
08:45AM 5 walking back into the office, correct?

08:45AM 6 A Correct.

08:45AM 7 Q And the "Call me ASAP," double exclamation point, is two
08:45AM 8 minutes before he walks into the office, correct?

08:45AM 9 A Correct.

08:45AM 10 Q Now, the government has never shown you any video showing
08:45AM 11 you arriving back at Kama'aina Termite and Pest Control after
08:45AM 12 you left on -- at 4:13 p.m. that day, correct?

08:45AM 13 A Correct.

08:45AM 14 Q And you have never seen any video showing you arriving
08:45AM 15 back at Kama'aina Termite and Pest Control after 4:13 p.m.,
08:45AM 16 correct?

08:45AM 17 A Correct.

08:45AM 18 MR. KENNEDY: Now, by stipulation, Your Honor, I would
08:46AM 19 admit Exhibit 9010-082, which is a video which is -- and before
08:46AM 20 we pull it up, it's from 5:35:36 through 5:59:48, which is
08:46AM 21 24 minutes.

08:46AM 22 To assist the jury, we have also marked
08:46AM 23 Exhibit 9010-83 that plays the video at 8-speed so we can get
08:46AM 24 through the 24 minutes in three minutes if the Court will
08:46AM 25 allow.

08:46AM 1 THE COURT: This is pursuant to the second
08:46AM 2 stipulation?
08:46AM 3 MR. KENNEDY: Yes, Your Honor.
08:46AM 4 THE COURT: Yes, then go ahead.
08:46AM 5 MR. KENNEDY: All right. If we could pull up 9010-83.
08:46AM 6 And this will be at a quicker speed so we can get through.
08:46AM 7 BY MR. KENNEDY:
08:46AM 8 Q Now, did you see Mr. Miske walk in?
08:46AM 9 A Yes.
08:46AM 10 Q All right. Do you see Mr. Miske get out and deal with
08:47AM 11 that truck that just came in?
08:47AM 12 A Yes.
08:47AM 13 Q So you went back into the office with the individual that
08:47AM 14 came with the truck that parked right by the bay, correct?
08:47AM 15 A Right in front of the shop, yes.
08:47AM 16 Q Right in front of the shop, yes.
08:49AM 17 All right. We're now at five -- back to the start, we
08:49AM 18 went all the way up to 5:59:48, correct?
08:50AM 19 A Yes.
08:50AM 20 Q Twenty-four minutes, Mr. Miske is still inside the shop.
08:50AM 21 The individual that he met is still inside the shop. Correct?
08:50AM 22 A Correct.
08:50AM 23 Q The video shows that you have not returned, correct?
08:50AM 24 A Correct.
08:50AM 25 Q Now, if we go to Exhibit 9010-085, which is also the one I

08:50AM 1 just played that first part, since that was moving at 8-speed,

08:50AM 2 I just want to play the first part of that.

08:50AM 3 We see Mr. Miske walking into the shop, correct?

08:50AM 4 A Correct.

08:50AM 5 MR. AKINA: Sorry, just to be clear, this is Exhibit

08:50AM 6 08 --

08:50AM 7 MR. KENNEDY: 082, the ones at regular speed, Counsel.

08:51AM 8 BY MR. KENNEDY:

08:51AM 9 Q Now, we're at 5:36. There's not a lot of activity at the

08:51AM 10 shop at this time, correct?

08:51AM 11 A Correct.

08:51AM 12 Q In fact, we see no one else in the area working, correct?

08:52AM 13 A Correct.

08:52AM 14 Q Now, we see this truck pull up and stop. A gentlemen gets

08:52AM 15 out of that truck, another gentlemen. And it's Mr. Miske who

08:53AM 16 comes out to greet them, correct?

08:53AM 17 A Yes.

08:53AM 18 Q So we're at 5:37 -- 38 Mr. Miske is dealing with these two

08:53AM 19 individuals and this truck, correct?

08:53AM 20 A Yes.

08:53AM 21 Q And they both walk inside.

08:53AM 22 A Yes.

08:53AM 23 MR. KENNEDY: All right. We can take that down since

08:53AM 24 the jury saw the rest of it. I just wanted to slow it down

08:53AM 25 through that portion.

08:53AM 1 BY MR. KENNEDY:

08:53AM 2 Q So we're at 5:38:22, Mr. Miske and the gentleman who came
08:53AM 3 in on the flatbed are inside the office, correct?

08:53AM 4 A Yes.

08:53AM 5 Q All right. Now, I want to go back to Exhibit 5-37. And
08:53AM 6 go to the fifth page.

08:53AM 7 So now we start out, Miller has texted you as we
08:53AM 8 pointed out at 5:21:49, "Yo," and 5:33:41, "Call me ASAP," two
08:54AM 9 exclamation points.

08:54AM 10 Here in 29 and 28 --

08:54AM 11 MR. KENNEDY: Ms. King, if you can blow that up.
08:54AM 12 Thank you so much.

08:54AM 13 BY MR. KENNEDY:

08:54AM 14 Q -- Miller is texting you a third time, "WTF, brah?" WTF
08:54AM 15 being "what the fuck," right?

08:54AM 16 A Correct.

08:54AM 17 Q And this is at 5:37:07, correct?

08:54AM 18 A Correct.

08:54AM 19 Q So Miller is texting you, "What the fuck, brah?"
08:54AM 20 Mr. Miller is dealing with a guy on a flatbed going into the
08:54AM 21 office, correct?

08:54AM 22 MR. AKINA: Objection. That's not what the witness
08:54AM 23 testified to.

08:54AM 24 THE WITNESS: That wasn't -- that wasn't Miller that
08:54AM 25 Mr. Miske was dealing with.

08:54AM 1 BY MR. KENNEDY:

08:54AM 2 Q I'm sorry, not Mr. Miller. He's dealing with someone in
08:54AM 3 the office who came on the flatbed truck. I just misspoke.

08:54AM 4 Thank you.

08:54AM 5 A Yes, that's correct.

08:54AM 6 Q You were getting a text from Mr. Miller, "WTF, brah,"
08:54AM 7 correct?

08:54AM 8 A Correct.

08:54AM 9 Q He's texting you, correct?

08:55AM 10 A Correct.

08:55AM 11 Q You left in your truck at 4:13, correct?

08:55AM 12 A Correct.

08:55AM 13 Q And then at 5:37:36, Miller texts you, "Text me back or
08:55AM 14 something," right?

08:55AM 15 A Correct.

08:55AM 16 Q Okay. Now, about -- we're now -- we see that at 6:08:48
08:55AM 17 is the first time you text him back, correct?

08:55AM 18 A Correct.

08:55AM 19 Q It's now about 30 minutes later, right?

08:55AM 20 A Yes.

08:55AM 21 Q You text him: "I was at the house. Left my phone in the
08:55AM 22 truck. Hold on. She just got home." Correct?

08:55AM 23 A Correct.

08:55AM 24 Q Moving to -- up to what is marked as 26, it's another --
08:56AM 25 you text him a second time at 6:42:36, correct?

08:56AM 1 A Correct.

08:56AM 2 Q So a little less than a half hour -- a little more than

08:56AM 3 half hour, correct, in between?

08:56AM 4 A Correct.

08:56AM 5 Q And what you text is: "Meet." Right?

08:56AM 6 A Yes.

08:56AM 7 Q "Give me" -- right?

08:56AM 8 A Yes.

08:56AM 9 Q -- "15 mins," M-I-N-S.

08:56AM 10 A Correct.

08:56AM 11 Q 15 minutes, right?

08:56AM 12 A Yes.

08:56AM 13 Q Miller texts back at 6:44:54, "K," for okay?

08:56AM 14 A Yes.

08:56AM 15 Q You meet him, right? You just texted him: "Meet, give me

08:57AM 16 15 mins," correct?

08:57AM 17 A Correct.

08:57AM 18 Q You meet him and you talk, right?

08:57AM 19 A No, I don't remember if we met.

08:57AM 20 Q You meet him at Sheridan Park, don't you?

08:57AM 21 A I don't believe so, sir.

08:57AM 22 Q You're the third voice that Mr. Robert Lee hears near the

08:57AM 23 car, correct?

08:57AM 24 A No.

08:57AM 25 Q You just text Miller: "Meet. Give me 15 minutes."

08:57AM 1 Correct?

08:57AM 2 MR. AKINA: Asked and answered.

08:57AM 3 THE COURT: You may answer, go ahead.

08:57AM 4 THE WITNESS: Yes, I did text him that.

08:57AM 5 BY MR. KENNEDY:

08:57AM 6 Q All right. Now, let's move up to what is marked as Number

08:58AM 7 24. There is no more texts from Mr. Miller to you between

08:58AM 8 6:42:36 and 7:47:48, correct?

08:58AM 9 A He texted "K," right, at 6:44.

08:58AM 10 Q At 6:42 he says -- at 6:44 he says "K," right?

08:58AM 11 A Yes.

08:58AM 12 Q And then it's all the way to 7:47:48, one hour and three

08:58AM 13 minutes roughly later, you text him: "Call you right back."

08:58AM 14 Correct?

08:58AM 15 A Correct.

08:58AM 16 Q There is no text from Miller to prompt a call back,

08:58AM 17 correct?

08:58AM 18 A Yes.

08:58AM 19 Q Miller called you, right? That's why you said, "Call you

08:59AM 20 right back," correct?

08:59AM 21 A Most likely.

08:59AM 22 Q Well, he wouldn't have you call him if you were with him

08:59AM 23 physically, right?

08:59AM 24 A Yes.

08:59AM 25 Q There's no text from him, correct?

08:59AM 1 A Correct.

08:59AM 2 Q When you say, "Call you right back," he called you. You
08:59AM 3 know that, sir.

08:59AM 4 A He probably did, sir.

08:59AM 5 Q And so very quickly, 12 seconds later --

08:59AM 6 MR. KENNEDY: If we move to the next page, page 4, and
08:59AM 7 go down to the bottom, Ms. King. So that -- it's very small.
08:59AM 8 Thank you so much.

08:59AM 9 BY MR. KENNEDY:

08:59AM 10 Q On the earlier page it was 7:47:48 when you texted "Call
09:00AM 11 you right back." 12 seconds later at 7:48, he says "K."

09:00AM 12 And that "he" is Miller, right?

09:00AM 13 A Yes.

09:00AM 14 Q And then at 8:11:38, he says "Brah."

09:00AM 15 A Correct.

09:00AM 16 Q In a text. Right?

09:00AM 17 A Yes.

09:00AM 18 Q "He" being Miller, correct?

09:00AM 19 A Yes.

09:00AM 20 Q And then 12 seconds later at 8:11:50, he texts you a third
09:00AM 21 time: "No more all night." Right?

09:00AM 22 A Yes.

09:00AM 23 Q Quickly within -- it looks like 11 seconds, you text back:

09:00AM 24 "I know, coming now." Right?

09:01AM 25 A Yes.

09:01AM 1 Q So he's waiting on you, and now you're coming now again,
09:01AM 2 correct?
09:01AM 3 A Yes, I'm meeting him.
09:01AM 4 Q And he says a minute later at 8:13:11 at 19: "How far
09:01AM 5 you?"
09:01AM 6 A Yes.
09:01AM 7 Q And you say at 8:14:15: I'm at Ala's, 5 to 10 mins."
09:01AM 8 Right?
09:01AM 9 A Correct.
09:01AM 10 Q Ala's being Ala Moana shopping center, correct?
09:01AM 11 A Yes.
09:01AM 12 Q And you're about to come now to Sheridan Park to see
09:01AM 13 Miller again, correct?
09:01AM 14 A Yes.
09:01AM 15 Q You're meeting Sunnie Kim at Ala Moana shopping center,
09:02AM 16 correct?
09:02AM 17 A No, I met Sunnie Kim at Sheridan Park.
09:02AM 18 Q Oh, you met her there with Miller?
09:02AM 19 A Not with Miller.
09:02AM 20 Q Oh, so you're at Ala Moana shopping center shopping at
09:02AM 21 this point?
09:02AM 22 A No.
09:02AM 23 Q All right. You're coming to Miller, and you know you
09:02AM 24 don't even have to ask, do you? You know where he's at,
09:02AM 25 Sheridan Park, right?

09:02AM 1 A Yes.

09:02AM 2 Q Nowhere in the text does he say where he's at. You've
09:02AM 3 been there before to see him by yourself, correct?

09:02AM 4 A Yes, I did meet Wayne at Sheridan Park.

09:02AM 5 Q And that's the end of the text on October 17, 2017,
09:03AM 6 correct?

09:03AM 7 A I believe so.

09:03AM 8 Q We can move over to the next page just to make certain.

09:03AM 9 MR. KENNEDY: If you blow up number 17, Ms. King.

09:03AM 10 BY MR. KENNEDY:

09:03AM 11 Q This shows 12:27:32 p.m. the next day, correct?

09:03AM 12 A Correct.

09:03AM 13 Q All right.

09:03AM 14 MR. KENNEDY: Now, we can take down Government
09:03AM 15 exhibit -- or Exhibit 5-37.

09:03AM 16 BY MR. KENNEDY:

09:03AM 17 Q So you meet with Miller after you say "I'm coming" to
09:03AM 18 Sheridan Park, right?

09:03AM 19 A Yes.

09:03AM 20 Q And so Miller tells you he needs money for to pay his
09:03AM 21 friend, yes?

09:03AM 22 A Yes.

09:03AM 23 Q Miller tells you he needs money for the cost of purchasing
09:03AM 24 the van, correct?

09:03AM 25 A Yes.

09:04AM 1 Q Yesterday -- oh, excuse me, on Thursday you told this jury
09:04AM 2 there was no van, correct?

09:04AM 3 MR. AKINA: Objection mischaracterizes the witness's
09:04AM 4 testimony.

09:04AM 5 THE COURT: You may answer.

09:04AM 6 THE WITNESS: Yes.

09:04AM 7 THE COURT: Overruled.

09:04AM 8 THE WITNESS: Yes.

09:04AM 9 BY MR. KENNEDY:

09:04AM 10 Q Yes, you did, you told him there was no van, and today now
09:04AM 11 you're telling them there is one, right?

09:04AM 12 A Yes.

09:04AM 13 Q So you said one thing on one day to this jury and another
09:04AM 14 thing today to this jury, correct?

09:04AM 15 A Correct.

09:04AM 16 Q And Miller tells you he needs money for the cost of
09:04AM 17 destroying the van, correct?

09:04AM 18 A Yes.

09:04AM 19 Q And you told the FBI this back in May of last -- 2023, and
09:04AM 20 on Thursday you said they got it wrong, didn't you?

09:04AM 21 A I don't -- can you -- I don't remember that part, sir.

09:05AM 22 Q You said there was no van. You never said that.

09:05AM 23 A Can you repeat that, please?

09:05AM 24 Q You said there was no van. You said that -- when I asked
09:05AM 25 you the question, I said, Didn't you tell the FBI that Miller

09:05AM 1 told you he needed money to pay for a van? And you said, no,
09:05AM 2 you didn't tell him that. Do you recall that?

09:05AM 3 A I do recall that.

09:05AM 4 Q All right. Now, that's a lie because there never was a
09:05AM 5 van, was there?

09:05AM 6 A Well, that's what Miller was asking me the money -- I
09:05AM 7 didn't know if there was a van or not there. That's what he
09:05AM 8 was asking me.

09:05AM 9 Q Mr. Lee was in Miller's Crown Vic the entire time. He
09:05AM 10 never got moved out of any vehicle, sir.

09:05AM 11 MR. AKINA: Objection. Is there a question?

09:06AM 12 BY MR. KENNEDY:

09:06AM 13 Q Isn't that true, you were at Sheridan Park and you saw
09:06AM 14 him?

09:06AM 15 A I did not see Mr. Lee at Sheridan Park, nor did I see the
09:06AM 16 Crown Vic that you're talking about.

09:06AM 17 Q Mr. Robert Lee never left the vehicle that he was
09:06AM 18 kidnapped in. You know that, sir.

09:06AM 19 A That's incorrect, I do not know that. Miller -- when I
09:06AM 20 saw Miller, he was in a light color sedan, not a --

09:06AM 21 Q A light-colored sedan. Not a dark-colored sedan.

09:06AM 22 A That is correct, sir.

09:06AM 23 Q I see. All right. Not red or dark.

09:06AM 24 A Not red or dark.

09:06AM 25 Q Okay. Now, you told the jury last Thursday that you and

09:07AM 1 Mr. Miller drove around for 30 to 60 minutes after you met him

09:07AM 2 at Sheridan Park.

09:07AM 3 A That's correct.

09:07AM 4 Q You drove over to meet him, right?

09:07AM 5 A Yes.

09:07AM 6 Q That text came in at 8:14, when you said you were coming,

09:07AM 7 right?

09:07AM 8 A Yes.

09:07AM 9 Q You say that you drove around, and he also asked you again

09:07AM 10 for money, right?

09:07AM 11 A Correct.

09:07AM 12 Q And then you said that instead of driving him back to

09:07AM 13 where you picked him up at Sheridan Park, you drove him to the

09:07AM 14 Fisherman's Wharf.

09:07AM 15 A Correct.

09:07AM 16 Q Back to the scene of the crime.

09:08AM 17 A I do not know if that was the scene of the crime.

09:08AM 18 Q And so he was at Sheridan Park and you drove him to a

09:08AM 19 different location, right?

09:08AM 20 A Correct.

09:08AM 21 Q And you know where it's at?

09:08AM 22 A No, I do not, sir.

09:08AM 23 Q So you didn't return him to his car.

09:08AM 24 A I dropped him off where he wanted to be dropped off at.

09:08AM 25 Q Back at the scene of a crime where he had just kidnapped

09:08AM 1 somebody, that's what you're telling the jury.

09:08AM 2 MR. AKINA: Objection. Mischaracterizes the witness's
09:08AM 3 testimony.

09:08AM 4 THE COURT: You may answer.

09:08AM 5 THE WITNESS: I just explained to you that I do not
09:08AM 6 know where the crime took place.

09:08AM 7 BY MR. KENNEDY:

09:08AM 8 Q Now, after you were arrested by the SWAT team for
09:08AM 9 threatening Sunnie Kim, you told the FBI that Sunnie Kim asked
09:08AM 10 you when you met with her on the 17th of October how much it
09:09AM 11 cost to kill Mr. Lee.

09:09AM 12 A Correct.

09:09AM 13 Q And you say that she made a gesture across her throat.

09:09AM 14 A Yes.

09:09AM 15 Q Now, this is after you were arrested for threatening her
09:09AM 16 in December of 2022, correct?

09:09AM 17 A No, that's not correct.

09:09AM 18 Q Well, what I mean is the first time you told this to the
09:09AM 19 FBI was after you had been arrested for threatening her.
09:09AM 20 Correct?

09:09AM 21 A That's correct.

09:09AM 22 Q And so your deal with her on the first day you met her was
09:09AM 23 50/50 split, right?

09:09AM 24 A Correct.

09:09AM 25 Q And no monies --

09:09AM 1 A Not 50/50 split. It was 50 percent of whatever was

09:09AM 2 collected.

09:10AM 3 Q Okay. Whatever was collected, 50 percent, 50/50, right?

09:10AM 4 A Correct.

09:10AM 5 Q Okay. So you're telling the jury that someone who said,

09:10AM 6 "How much does it cost to kill?" did this across their throat,

09:10AM 7 simply paid you \$90,000 when they got nothing? That's what

09:10AM 8 you're trying to sell?

09:10AM 9 A That is the truth, sir.

09:10AM 10 Q That's the truth.

09:10AM 11 A Yes.

09:10AM 12 Q Someone who went like this across their throat just gave

09:10AM 13 up \$90,000.

09:10AM 14 A That's true, sir.

09:10AM 15 Q That too, the first time you told that was after you had

09:10AM 16 threatened Sunnie Kim and were arrested by the SWAT, correct?

09:10AM 17 A That is not correct, because I didn't threaten Sunnie Kim

09:10AM 18 at any point.

09:10AM 19 MR. KENNEDY: Now, if we go back to Exhibit 5-37, and

09:11AM 20 if we go to -- let's see, I believe it would be the fourth

09:11AM 21 page if I'm -- actually it would be the third. Down at -- if

09:11AM 22 we go to the bottom of the page, Ms. King. Thank you, Ashley.

09:11AM 23 BY MR. KENNEDY:

09:11AM 24 Q If we look at the first text on October 18, 2017, once

09:11AM 25 again Miller is texting you, right?

09:11AM 1 A Yes.

09:11AM 2 Q "Call me ASAP." Correct?

09:11AM 3 A Correct.

09:11AM 4 Q And it's at 12:27:32 in the afternoon.

09:11AM 5 A Correct.

09:12AM 6 Q Roughly four hours later he texts you: "Pres, I just got

09:12AM 7 to take care of my boys something, then I can wait till

09:12AM 8 tomorrow is Thursday." Correct?

09:12AM 9 A Correct.

09:12AM 10 Q About a half an hour later you text: "I'm doing an -- I'm

09:12AM 11 doing an estimate right now, braddah." Said: "Hold on, and

09:12AM 12 then I'm going to meet him at shop right after this and get

09:12AM 13 back to you."

09:12AM 14 Do you see that?

09:12AM 15 A Yes.

09:12AM 16 Q Miller texts back at 4:35:24: "Who?" Correct?

09:12AM 17 A Correct.

09:12AM 18 Q Not Mike, right?

09:12AM 19 A Not Mike.

09:12AM 20 Q Not Bro, right?

09:12AM 21 A Not Bro.

09:12AM 22 Q Not Mr. Miske, right?

09:12AM 23 A Correct.

09:12AM 24 Q You have to type back, "Bro." Right?

09:13AM 25 A Yes.

09:13AM 1 Q And so if we -- he doesn't know, does he? He asks:

09:13AM 2 "Who?"

09:13AM 3 A Because braddah --

09:13AM 4 Q No, sir, he asked, "Who?" Correct?

09:13AM 5 A Correct.

09:13AM 6 Q All right. Now, if we move up: "What about your guy, he
09:13AM 7 come tru?" is what you text at 4:36, right?

09:13AM 8 Oh, outgoing: "What about your guy, he come tru?"

09:13AM 9 MR. KENNEDY: Thank you for correcting me.

09:13AM 10 BY MR. KENNEDY:

09:13AM 11 Q Miller texts: "You that." Right?

09:13AM 12 A Yes.

09:13AM 13 Q "Your guy" is Mr. Kim, right?

09:14AM 14 A Yes.

09:14AM 15 Q Tony Kim, right?

09:14AM 16 A Yes.

09:14AM 17 Q He doesn't text, Not your girl, Sunnie Kim, correct?

09:14AM 18 A Yes.

09:14AM 19 MR. KENNEDY: We can take that down.

09:14AM 20 Now, if we can pull up Exhibit 5268, I want to
09:14AM 21 transition to another topic.

09:14AM 22 And that is not yet in evidence, Your Honor, and it
09:14AM 23 should be in the 5000 notebook.

09:14AM 24 THE COURT: Happen to know which one?

09:14AM 25 MR. KENNEDY: It is in 268, so it would be probably in

09:14AM 1 the first one, Your Honor, because it would be in the first
09:14AM 2 group, I hope.

09:14AM 3 THE COURT: I've got it. It's in the second binder.

09:14AM 4 MR. KENNEDY: Thank you for letting me know, Your
09:15AM 5 Honor.

09:15AM 6 THE COURT: You want to show this to the witness?

09:15AM 7 MR. KENNEDY: Yes. Can we pull it up?

09:15AM 8 THE COURT: Yes, you may.

09:15AM 9 MR. KENNEDY: Thank you, Ms. King.

09:15AM 10 And it is not yet in evidence.

09:15AM 11 BY MR. KENNEDY:

09:15AM 12 Q Sir, do you recognize what's been marked as 5000-268?

09:15AM 13 A Yeah, it says Kama'aina Termite and Pest Control.

09:15AM 14 Q All right. So you -- to give some -- you were working at
09:15AM 15 O'ahu Termite and Pest Control, correct, in 2020?

09:15AM 16 A Yes.

09:15AM 17 Q And in -- from 2015 on to 2019, correct?

09:15AM 18 A From 2015 to 2019, I did get -- my paychecks did come from
09:15AM 19 Kama'aina Termite and Pest Control.

09:15AM 20 Q And as I understood it, you had -- from your testimony
09:15AM 21 last week, you had worked for Kama'aina and for O'ahu at
09:15AM 22 various times during the same period, correct?

09:15AM 23 A Correct.

09:16AM 24 Q All right.

09:16AM 25 MR. KENNEDY: Your Honor, I would move

09:16AM 1 Exhibit 5000-268 into evidence at this time.

09:16AM 2 THE COURT: Any objection?

09:16AM 3 MR. AKINA: No objection.

09:16AM 4 THE COURT: All right. Without objection, 5000-268 is
09:16AM 5 admitted.

09:16AM 6 (Exhibit 5000-268 was received in evidence.)

09:16AM 7 MR. KENNEDY: May we publish it?

09:16AM 8 THE COURT: Yes, you may.

09:16AM 9 BY MR. KENNEDY:

09:16AM 10 Q Now, you had mentioned something about reputation. Now it
09:16AM 11 looks like during this time period in 2013, it looks like
09:16AM 12 Kama'aina was able to get first place in Hawaii's Best, right?

09:16AM 13 A That is correct.

09:16AM 14 Q And also in 2019 as well?

09:16AM 15 A Correct.

09:16AM 16 Q And the sorts of things that they offer and -- then
09:16AM 17 there's a bit about a warm thanks and eight years in a row
09:16AM 18 being voted into Hawaii's Best, correct?

09:16AM 19 A Correct.

09:16AM 20 Q Structural fumigation is one of the areas that they --
09:17AM 21 that company did, Mike's company, right?

09:17AM 22 A Correct.

09:17AM 23 Q General pest control?

09:17AM 24 A Correct.

09:17AM 25 Q Ground treatment?

09:17AM 1 A Correct.

09:17AM 2 Q Centricon?

09:17AM 3 A Correct.

09:17AM 4 Q Bed bugs?

09:17AM 5 A Correct.

09:17AM 6 Q Rodents?

09:17AM 7 A Correct.

09:17AM 8 Q Pest birds?

09:17AM 9 A Correct.

09:17AM 10 Q And termite inspection reports?

09:17AM 11 A Correct.

09:17AM 12 MR. KENNEDY: All right. Now, if we move to

09:17AM 13 Exhibit 5000-264, which is not yet in evidence, Your Honor.

09:17AM 14 THE COURT: Go ahead.

09:17AM 15 BY MR. KENNEDY:

09:17AM 16 Q Do you recognize Exhibit 5000-264?

09:17AM 17 A Yes.

09:17AM 18 Q Do you recognize the church?

09:17AM 19 A I don't recognize the church, but that's what it looks
09:17AM 20 like.

09:17AM 21 Q Does Kaumakapili ring a bell?

09:18AM 22 A Sorry?

09:18AM 23 Q Does Kaumakapili run a bell -- ring a bell with you?

09:18AM 24 A No.

09:18AM 25 Q Okay. This is 2013. Before I ask this, let me ask you to

09:18AM 1 take a look at Exhibit 5000-248 before I move this into
09:18AM 2 evidence.

09:18AM 3 Now, you're working at Kama'aina in 2020, correct?

09:18AM 4 A Yes.

09:18AM 5 Q All right. And if -- you're familiar with this calendar,
09:18AM 6 right?

09:18AM 7 A I believe I've seen it.

09:18AM 8 Q All right. Well, let's flip through the pages just for
09:18AM 9 you to make certain that you recognize it.

09:18AM 10 A (Peruses document.)

09:19AM 11 Q Now, that you had a chance to see it, do you recognize
09:19AM 12 what's been shown in the 2020 calendar?

09:19AM 13 A Yes, pictures.

09:19AM 14 MR. KENNEDY: All right. At this time, Your Honor, I
09:19AM 15 would move Exhibit 5000-248 into evidence.

09:19AM 16 MR. AKINA: No objection.

09:19AM 17 THE COURT: Without objection --

09:19AM 18 MR. KENNEDY: May we publish, Your Honor?

09:19AM 19 THE COURT: Yes. 5000-248 is admitted.

09:19AM 20 (Exhibit 5000-248 was received in evidence.)

09:19AM 21 BY MR. KENNEDY:

09:19AM 22 Q All right. So last week you talked to the jury about the
09:19AM 23 fact that you were in sales, right?

09:19AM 24 A Correct.

09:19AM 25 Q And marketing, right?

09:19AM 1 A Yes, I did help out with that.

09:19AM 2 Q And calendars and things like that are part of promotional
09:19AM 3 material that businesses use, right?

09:19AM 4 A Yes.

09:19AM 5 MR. KENNEDY: Okay. So if we flip to the next page,
09:19AM 6 Ms. King.

09:19AM 7 BY MR. KENNEDY:

09:20AM 8 Q Now, we move to this page, you're familiar with the
09:20AM 9 Shangri La fumigation in 2019 done by Kama'aina Termite and
09:20AM 10 Pest Control?

09:20AM 11 A Not totally, but I do know that they -- they did this
09:20AM 12 fumigation. I wasn't on site or I didn't -- this wasn't my
09:20AM 13 job.

09:20AM 14 Q Okay. Let's move -- you're familiar with it, but it
09:20AM 15 wasn't your sales job.

09:20AM 16 A Yes.

09:20AM 17 Q All right. Familiar with the fumigation job at the Neal
09:20AM 18 S. Blaisdell concert hall?

09:20AM 19 A I don't believe I was working there when they did this
09:20AM 20 fumigation.

09:20AM 21 Q All right. But in terms of sales and marketing, it's
09:20AM 22 something that was used that it had happened in the past before
09:20AM 23 you started working?

09:20AM 24 A Correct.

09:20AM 25 Q All right. Let's move on. Familiar with this Portlock

09:20AM 1 home fumigation that is shown here on the east side of

09:20AM 2 Honolulu?

09:20AM 3 A I seen this picture before, but like I said, it wasn't my

09:21AM 4 particular job or I wasn't on this job site.

09:21AM 5 Q All right. So oftentimes in sales you would get a

09:21AM 6 customer, and then complete and follow it up whether it's a

09:21AM 7 fumigation or other services, right?

09:21AM 8 A Correct.

09:21AM 9 Q Okay. And this one just wasn't your job.

09:21AM 10 A Yeah.

09:21AM 11 Q Okay. Moving on. Queen Emma Summer Palace, are you

09:21AM 12 familiar with this in 2019?

09:21AM 13 A Not really. I -- I know that they had performed this

09:21AM 14 fumigation, but like I said, neither was it my -- my job or I

09:21AM 15 wasn't on site.

09:21AM 16 Q Okay. I can do this. All right. You're familiar with it

09:21AM 17 because you were working at that point with O'ahu Termite and

09:21AM 18 Pest Control, right?

09:21AM 19 A I was familiar with it because I heard that name going

09:21AM 20 around. I mean somebody had said it in the office --

09:21AM 21 Q Okay.

09:21AM 22 A -- that's what the job was.

09:21AM 23 Q All right. Moving on to St. Louis School, Bertram Hall,

09:22AM 24 were you familiar with that in 2016 when you were working?

09:22AM 25 A I don't remember them doing this particular job.

09:22AM 1 Q Okay. You were working in 2016 with Kama'aina at that
09:22AM 2 time?

09:22AM 3 A Yes.

09:22AM 4 Q Okay. Moving on to May of 2020, in the materials, were
09:22AM 5 you are familiar with the bed bugs and the King Kamehameha IV
09:22AM 6 on the Big Island?

09:22AM 7 A Yes, I did -- I did hear about this particular job.

09:22AM 8 Q All right. Moving on. Poinciana Manor up in Kailua, were
09:22AM 9 you familiar with this job that was done by Kama'aina Termite
09:22AM 10 and Pest Control?

09:22AM 11 A I'm not totally familiar with this job.

09:22AM 12 Q Knew about it, but it wasn't a job that you were involved
09:22AM 13 with?

09:22AM 14 A Yeah, I seen this picture before, but it wasn't something
09:22AM 15 that I was involved with.

09:23AM 16 Q Okay. All right. Moving on. The Waikiki Shell, prior to
09:23AM 17 your working, were you familiar with it when you came to work
09:23AM 18 at Kama'aina Termite and Pest Control?

09:23AM 19 A Familiar being that I've seen this picture before.

09:23AM 20 Q Okay. All right. Moving on. Anything about the private
09:23AM 21 residence in this fumigation click a bell as to whether this
09:23AM 22 was something that you personally were involved with?

09:23AM 23 A Not to my knowledge.

09:23AM 24 Q Fair enough. Let's move on to the next. I asked you
09:23AM 25 about the church. Anything about that now that is familiar to

09:23AM 1 you now that you see the name?

09:23AM 2 A No, not really. I mean I seen this -- I seen this picture
09:23AM 3 before, but I don't know where it's located or I don't know
09:23AM 4 what church this is.

09:23AM 5 Q Okay. All right. Moving on. This would be a picture of
09:24AM 6 when you're -- it's not you, but someone who is out talking
09:24AM 7 with someone about entering into a contract, correct?

09:24AM 8 A Correct.

09:24AM 9 Q All right. Moving on. Familiar with the 2019 work over
09:24AM 10 at Iolani Palace in -- in the mobile fumigation chamber?

09:24AM 11 A Yes, I did -- I did hear about this.

09:24AM 12 Q Okay. Wasn't your job as well?

09:24AM 13 A No, this wasn't my job.

09:24AM 14 Q Okay. But it was during your time that you're working
09:24AM 15 there in 2019, right?

09:24AM 16 A Yes.

09:24AM 17 Q Okay.

09:24AM 18 MR. KENNEDY: All right. Now, at this time, Your
09:24AM 19 Honor, I would move 5000-248 and 5000-264 -- I guess 5000-264
09:24AM 20 into evidence.

09:24AM 21 THE COURT: 248 already has been admitted.

09:24AM 22 MR. AKINA: Lack of foundation for 264.

09:25AM 23 THE COURT: Objection is sustained. That's with
09:25AM 24 respect to 264.

09:25AM 25 MR. KENNEDY: All right. If we pull up 5000-257,

09:25AM 1 which is not yet in evidence.

09:25AM 2 THE COURT: Yes.

09:25AM 3 BY MR. KENNEDY:

09:25AM 4 Q Are trade shows one of the things that Kama'aina and O'ahu
09:25AM 5 Termite and Pest Control did?

09:25AM 6 A Yes.

09:25AM 7 Q Were you involved with any trade shows for Kama'aina?

09:25AM 8 A No. I -- I did say sit at one of their booths when I
09:25AM 9 first started when Mike hadn't acquired O'ahu Termite.

09:25AM 10 Q All right. Were you at the Blaisdell trade show in 2019?

09:26AM 11 A I was at the Blaisdell trade show.

09:26AM 12 Q Familiar with this booth at the Blaisdell trade show in
09:26AM 13 2019?

09:26AM 14 A Yes, it does look familiar.

09:26AM 15 MR. KENNEDY: At this time, Your Honor, I would move
09:26AM 16 5000-257 into evidence.

09:26AM 17 MR. AKINA: No objection.

09:26AM 18 THE COURT: Without objection, 5000-257 is admitted.
09:26AM 19 You may publish.

09:26AM 20 (Exhibit 5000-257 was received in evidence.)

09:26AM 21 MR. KENNEDY: Can we publish it?

09:26AM 22 THE COURT: Yes, you may.

09:26AM 23 MR. KENNEDY: Thank you, sir.

09:26AM 24 BY MR. KENNEDY:

09:26AM 25 Q So at the trade shows there are homeowners that come?

09:26AM 1 A Yes.

09:26AM 2 Q Businesses that come?

09:26AM 3 A Correct.

09:26AM 4 Q And you share with them promotional materials?

09:26AM 5 A Correct.

09:26AM 6 Q And that's the purpose of it is as well, right?

09:26AM 7 A Yes.

09:26AM 8 Q Okay. Moving on to Exhibits 5000-018. Are you familiar

09:27AM 9 with the 2020 fumigation work at the Polynesian Cultural

09:27AM 10 Center?

09:27AM 11 A Yes.

09:27AM 12 Q Were you on site?

09:27AM 13 A No, I was not on site.

09:27AM 14 Q Were you familiar with it in meetings that were held?

09:27AM 15 A Yes, I did listen in on a few meetings.

09:27AM 16 MR. KENNEDY: All right. Your Honor, I would at this

09:27AM 17 time move 5000-018 through 5000-036, which are all photographs

09:27AM 18 of the Polynesian Cultural Center in 2020?

09:27AM 19 MR. AKINA: Objection. No foundation.

09:27AM 20 THE COURT: Sustained.

09:27AM 21 BY MR. KENNEDY:

09:27AM 22 Q Have you seen this photograph, Polynesian Cultural Center

09:27AM 23 from 2020?

09:27AM 24 A I do not remember seeing -- I might have seen it, but I

09:28AM 25 don't remember seeing this particular picture.

09:28AM 1 Q All right. You're not -- do you recall seeing any
09:28AM 2 photographs of that work at the Polynesian Cultural Center in
09:28AM 3 2020?

09:28AM 4 A No, I don't -- I don't remember --

09:28AM 5 Q Okay.

09:28AM 6 A -- seeing pictures of it.

09:28AM 7 Q If you don't remember, you don't remember.

09:28AM 8 Moving on to Exhibit 5000-087, which has not been put
09:28AM 9 into evidence.

09:28AM 10 Do you recognize the individuals shown in 5000-087?

09:28AM 11 A I recognize Mike Warden.

09:28AM 12 Q All right.

09:28AM 13 A I do not recognize the other person.

09:28AM 14 Q Okay. With respect to the Queen Emma Summer Palace work
09:28AM 15 in 2019, were you involved with that at all?

09:28AM 16 A No.

09:28AM 17 Q All right. Have you seen or used any of the promotional
09:28AM 18 material in your job in sales during this time regarding the
09:29AM 19 Queen Emma Summer Palace job in 2019?

09:29AM 20 A No, I've never used the Queen Emma Summer Palace --

09:29AM 21 Q Okay.

09:29AM 22 A -- in any of my jobs that I did.

09:29AM 23 Q Okay. Moving on to 5000-093, the mobile fumigation
09:29AM 24 chamber, 2019, Iolani Palace?

09:29AM 25 A No.

09:29AM 1 Q Have you used any of this material in your work with
09:29AM 2 Kama'aina Termite and Pest Control or O'ahu Termite and Pest
09:29AM 3 Control?
09:29AM 4 A No, I haven't, sir.
09:29AM 5 Q All right. Moving on to 5000-121. Do you recognize
09:29AM 6 what's shown on 5000-121?
09:29AM 7 A The Doris Duke.
09:29AM 8 Q All right. Were you personally involved in any of the
09:30AM 9 work in 2018 with the Doris Duke Estate, Shangri La fumigation?
09:30AM 10 A No, I was not.
09:30AM 11 Q All right. Moving on to 5000-128. Do you recognize what
09:30AM 12 is tented in 5000-128?
09:30AM 13 A This looks like the Ala Moana boathouse -- I mean, the Ala
09:30AM 14 Moana clubhouse.
09:30AM 15 Q Okay. Do you recognize the Waikiki Yacht Club?
09:30AM 16 A Correct.
09:30AM 17 Q Were you involved in the 2020 Waikiki Yacht Club
09:30AM 18 fumigation?
09:30AM 19 A I didn't sell this job, but I was a part of it, meaning I
09:30AM 20 gave an estimate at a way higher price than the Kama'aina
09:30AM 21 person, the Kama'aina salesperson, and so we worked together
09:31AM 22 into -- into securing this job.
09:31AM 23 MR. KENNEDY: All right. At this point I would move
09:31AM 24 5000-128 to 5000-145.
09:31AM 25 THE COURT: Any objection?

09:31AM 1 MR. AKINA: No objection.

09:31AM 2 THE COURT: Okay. Without objection, 5000-128 through

09:31AM 3 5000-145, so it looks like about 18 exhibits, are admitted.

09:31AM 4 You may publish.

09:31AM 5 (Exhibits 5000-128 through 5000-145

09:31AM 6 were received in evidence.)

09:31AM 7 MR. KENNEDY: May we publish 5000-128?

09:31AM 8 THE COURT: Yes.

09:33AM 9 MR. KENNEDY: Let's quickly go through, 5000-129, 130,

09:33AM 10 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142,

09:34AM 11 143, and 144 and 145.

09:34AM 12 BY MR. KENNEDY:

09:34AM 13 Q This was in May of 2020, correct?

09:34AM 14 A I don't know the date, but I'm assuming you're correct.

09:34AM 15 Q So at the same time that Kama'aina Termite and Pest

09:34AM 16 Control is doing this job, they're also doing the Mauna Kea

09:34AM 17 Hotel fumigation on the Big Island, correct?

09:34AM 18 A I'm not sure, sir.

09:34AM 19 Q All right. I show you -- you're not familiar with the

09:34AM 20 Mauna Kea Hotel fumigation?

09:34AM 21 A I'm familiar with it because it was a big project, but I

09:34AM 22 don't remember when we were doing that particular job.

09:34AM 23 Q Okay. I showed you this because I believe last week you

09:34AM 24 said that, you know, O'ahu Termite and Pest Control had a

09:35AM 25 better reputation than Kama'aina Termite and Pest Control. Do

09:35AM 1 you recall that?

09:35AM 2 A Yes, I recall that.

09:35AM 3 Q Now, O'ahu Termite and Pest Control started in the 1970s,
09:35AM 4 right?

09:35AM 5 A I believe so.

09:35AM 6 Q Okay. And at a certain point in about 1999 to 2000, you
09:35AM 7 understand because you started working at Kama'aina Termite and
09:35AM 8 Pest Control, that Kama'aina did all the fumigations for O'ahu
09:35AM 9 Termite and Pest Control, correct?

09:35AM 10 A Correct.

09:35AM 11 Q And so O'ahu focused on other aspects of pest control
09:35AM 12 other than fumigation, correct?

09:35AM 13 A When I worked there or --

09:35AM 14 Q Before and when you worked there up to a certain point,
09:35AM 15 yes.

09:35AM 16 A When -- I don't -- I can't speak before that, but when I
09:35AM 17 worked there we concentrated on everything, and fumigation was
09:36AM 18 at the top of the list.

09:36AM 19 Q Right. But let me stop you there. You started working in
09:36AM 20 2015, right?

09:36AM 21 A Correct.

09:36AM 22 Q So you weren't aware that prior to that for about at least
09:36AM 23 15 years, Kama'aina Termite and Pest Control had done all the
09:36AM 24 fumigations for O'ahu. Is that a fair statement?

09:36AM 25 A Yes, that's a fair statement.

09:36AM 1 Q Okay. In 2015, Kama'aina Termite and Pest Control was
09:36AM 2 still doing the fumigations for O'ahu Termite and Pest Control,
09:36AM 3 correct?
09:36AM 4 A Yes.
09:36AM 5 Q They did it through 2015, right?
09:36AM 6 A Correct.
09:36AM 7 Q They did it through 2016, correct?
09:36AM 8 A Yes.
09:36AM 9 Q In 2017, they did it, but something changed, correct?
09:36AM 10 A Yes.
09:36AM 11 Q O'ahu Termite and Pest Control became an entity, right?
09:36AM 12 A Yes.
09:36AM 13 Q Because Mr. Miske took it over, right? It was sold to
09:36AM 14 him, right?
09:36AM 15 A That's what I've been told.
09:37AM 16 Q And in the beginning Kama'aina Termite and Pest Control
09:37AM 17 did the fumigations for O'ahu Pest -- Termite and Pest Control
09:37AM 18 as they had prior in 2015 and 2016, correct?
09:37AM 19 A Yes.
09:37AM 20 Q Eventually when Mr. Miske had it, eventually you got blue
09:37AM 21 tarps, right?
09:37AM 22 A Yes.
09:37AM 23 Q And O'ahu started doing fumigations for the first time.
09:37AM 24 A Yes, we did have -- we did have one dedicated crew too.
09:37AM 25 Q And so that dedicated crew would go out to places which

09:37AM 1 were tented, right?

09:37AM 2 A They would go out and put up the tents and take them down.

09:37AM 3 Q Right. And the fumigation would be done by Kama'aina

09:37AM 4 Termite and Pest Control, correct?

09:37AM 5 A I'm not understanding your question, sir. When --

09:38AM 6 Q When they -- in the beginning before you got the blue

09:38AM 7 tents --

09:38AM 8 A Yes.

09:38AM 9 Q -- then the dedicated crew from Kama'aina Termite and Pest

09:38AM 10 Control would go out and actually shoot the Vikane gas into the

09:38AM 11 home, correct?

09:38AM 12 A Yes, the Kama'aina crew would go and do the tenting for

09:38AM 13 O'ahu Termite.

09:38AM 14 Q Right. Eventually, eventually you got a crew and you got

09:38AM 15 blue tents, right?

09:38AM 16 A Correct.

09:38AM 17 Q Because the jury has seen the red and black for Kama'aina

09:38AM 18 Termite, correct?

09:38AM 19 A Yes.

09:38AM 20 Q And so then now O'ahu Termite and Pest Control was doing

09:38AM 21 something new, fumigations, right?

09:38AM 22 A No, I don't think that's correct.

09:38AM 23 Q Oh, they didn't do it in 2015, right?

09:38AM 24 A No, it was -- Kama'aina was doing their tent fumigations,

09:38AM 25 correct.

09:38AM 1 Q Right. So O'ahu Termite and Pest Control was doing ground
09:39AM 2 service and other things on their own, but when they needed
09:39AM 3 fumigation, they turned and had Kama'aina Termite and Pest
09:39AM 4 Control do them, correct?
09:39AM 5 A Correct.
09:39AM 6 Q And that good reputation came from Kama'aina's fumigation
09:39AM 7 work in addition to O'ahu Termite and Pest Control's other work
09:39AM 8 with pest control, correct?
09:39AM 9 A I wouldn't say it was due to Kama'aina's good reputation
09:39AM 10 and good work. There was a lot of customers that would cancel
09:39AM 11 jobs on the day of the job because Kama'aina showed up, and it
09:39AM 12 wasn't an O'ahu Termite crew.
09:39AM 13 Q Sure. Sure. Because they're doing three times the amount
09:39AM 14 of fumigations as anybody on the island, right?
09:39AM 15 A That's correct.
09:39AM 16 Q And so if you're doing that sort of volume of time -- time
09:39AM 17 again somebody might not be happy, right?
09:39AM 18 A Correct.
09:39AM 19 Q Everything doesn't go perfect every time in business,
09:40AM 20 right?
09:40AM 21 A It doesn't.
09:40AM 22 Q Things happen, right?
09:40AM 23 A Things happen.
09:40AM 24 Q So if you're doing three times the volume of others,
09:40AM 25 you're probably going to have maybe a complaint or more or two,

09:40AM 1 right?

09:40AM 2 A Most likely.

09:40AM 3 Q Okay. But as you've seen, nobody on the island was doing
09:40AM 4 the large jobs that I've shown you, correct?

09:40AM 5 A Not to my knowledge.

09:40AM 6 Q The one that was doing it was Kama'aina Termite and Pest
09:40AM 7 Control, correct?

09:40AM 8 A Correct.

09:40AM 9 MR. KENNEDY: I want to move to -- and, Your Honor, I
09:40AM 10 believe this would be in the exhibit binder for 5003.

09:41AM 11 THE COURT: I've got the binder.

09:41AM 12 MR. KENNEDY: All right. And I would like to show the
09:41AM 13 witness Exhibit 5003-008.

09:41AM 14 THE COURT: Okay.

09:41AM 15 BY MR. KENNEDY:

09:41AM 16 Q Do you recognize what's been marked 5003-008, sir?

09:41AM 17 A Yes.

09:41AM 18 Q What is it?

09:41AM 19 A It is myself and Chaunce at a booth for Realtors, I
09:41AM 20 believe.

09:42AM 21 MR. KENNEDY: All right. At this time, Your Honor, I
09:42AM 22 would move Exhibit 5003-008 into evidence.

09:42AM 23 MR. AKINA: No objection.

09:42AM 24 THE COURT: Without objection, Exhibit 5003-008 is
09:42AM 25 admitted.

09:42AM 1 (Exhibit 5003-008 was received in evidence.)

09:42AM 2 MR. KENNEDY: May we publish, please?

09:42AM 3 THE COURT: Yes, you may.

09:42AM 4 MR. KENNEDY: Thank you.

09:42AM 5 BY MR. KENNEDY:

09:42AM 6 Q So we saw a booth for Kama'aina Termite and Pest Control
09:42AM 7 earlier. Is this a similar booth at a similar trade show?

09:42AM 8 A Yes.

09:42AM 9 Q Is it a different trade show? Are you able to recognize
09:42AM 10 where you're at?

09:42AM 11 A I believe this is a different trade show. This is for
09:42AM 12 just Realtors.

09:42AM 13 Q Okay.

09:42AM 14 A Not the public.

09:42AM 15 Q So you're talking about there are trade shows there are
09:42AM 16 for the public. I believe you said this was just for Realtors,
09:42AM 17 right?

09:42AM 18 A Yes.

09:42AM 19 Q And Realtors have a real need for termite and pest control
09:42AM 20 services, right?

09:42AM 21 A Yes.

09:42AM 22 Q And that would involve termite inspection reports?

09:42AM 23 A Termite inspection reports, fumigations.

09:43AM 24 Q And so the termite inspection report would be something
09:43AM 25 that a buyer is looking for before they're going to put their

09:43AM 1 hard earned money down and buy a home, right?

09:43AM 2 A I believe the termite inspection report is required before
09:43AM 3 a house -- a home is sold or a condo is sold.

09:43AM 4 Q So it's now required because the problem is so great you
09:43AM 5 need it before anyone will buy or sell.

09:43AM 6 A Yes.

09:43AM 7 Q All right. And so this is a specialty trade show in
09:43AM 8 addition to the other trade shows, right?

09:43AM 9 A Yes.

09:43AM 10 Q All right. Moving?

09:43AM 11 MR. KENNEDY: On to Exhibit 5003-007. If we just pull
09:43AM 12 it up before we play it.

09:43AM 13 (Video was played for the jury.)

09:43AM 14 We can just stop it, Ms. King, for a second.

09:43AM 15 BY MR. KENNEDY:

09:44AM 16 Q Do you recall a fumigation at King's Chapel in 2020 during
09:44AM 17 COVID?

09:44AM 18 A No, I don't believe it was a fumigation.

09:44AM 19 Q Or a -- I'm sorry. Thank you for correcting me.

09:44AM 20 Do you recall work done by O'ahu Termite and Pest
09:44AM 21 Control on -- in 2020 during COVID?

09:44AM 22 A Yes.

09:44AM 23 MR. KENNEDY: And can we stop it?

09:44AM 24 BY MR. KENNEDY:

09:44AM 25 Q You do recall it?

09:44AM 1 A Yes, I do recall.

09:44AM 2 Q Do you recall that in the footage that we're looking at
09:44AM 3 you personally spoke?

09:44AM 4 A Yes, I did.

09:44AM 5 MR. KENNEDY: Okay. At this time I would offer
09:44AM 6 5003-007 into evidence.

09:44AM 7 THE COURT: Any objection, Counsel?

09:44AM 8 MR. AKINA: No objection, Your Honor.

09:44AM 9 THE COURT: Without objection, 5003-7 is admitted.

09:44AM 10 (Exhibit 5003-007 was received in evidence.)

09:44AM 11 MR. KENNEDY: May we publish and also then use the
09:44AM 12 sound?

09:44AM 13 THE COURT: Yes, you may play the video.

09:45AM 14 MR. KENNEDY: Thank you, Your Honor.

09:45AM 15 Oops, looks like we don't have sound. Let's see if we
09:45AM 16 can get that worked out.

09:45AM 17 Still no sound. Still no sound. I apologize.

09:45AM 18 Technology sometimes.

09:45AM 19 Can we go back to the beginning.

09:45AM 20 (Video was played for the jury.)

09:45AM 21 BY MR. KENNEDY:

09:45AM 22 Q So at this time you were with O'ahu Termite and Pest
09:47AM 23 Control, correct?

09:47AM 24 A Yes.

09:47AM 25 Q And you're providing a service to this church, right?

09:47AM 1 A Yes.

09:47AM 2 Q During COVID, correct?

09:47AM 3 A Correct.

09:47AM 4 MR. KENNEDY: Moving on to Exhibit 5003-009.

09:47AM 5 BY MR. KENNEDY:

09:47AM 6 Q Before we play it, are you familiar with an individual by
09:47AM 7 the name of Wes Otani?

09:47AM 8 A Yes, I've met Wes.

09:47AM 9 Q Wes Otani worked for Terminix for a while. Are you aware
09:48AM 10 of that?

09:48AM 11 A Yes.

09:48AM 12 Q And then he worked at Douglas Products, right?

09:48AM 13 A Correct.

09:48AM 14 Q And Douglas Products is the manufacturer for Vikane,
09:48AM 15 right?

09:48AM 16 A The distributor.

09:48AM 17 Q The distributor.

09:48AM 18 A I don't know if they make it or not.

09:48AM 19 Q And are you familiar with the training program that
09:48AM 20 fumigators and other authorized technicians have to go through
09:48AM 21 here in the state to do this job?

09:48AM 22 A I'm not familiar.

09:48AM 23 Q Did you attend the four-part training that Wes Otani did
09:48AM 24 for all the folks working for Kama'aina Termite and Pest
09:48AM 25 Control and O'ahu Termite and Pest Control regarding fumigating

09:48AM 1 a house inside, outside, everything involved?

09:48AM 2 A I've sat in and attended Wes Otani's -- I guess he came in
09:49AM 3 and gave an education class on -- we took -- we took that
09:49AM 4 before -- I mean we saw Wes and listened to him, and did
09:49AM 5 practice tests for our own tests, but I haven't sat in on every
09:49AM 6 seminar that Wes has come and done for the companies.

09:49AM 7 Q Understood. Let me show you just the first one of a
09:49AM 8 four-part training and see if it looks familiar to you to be --
09:49AM 9 if you were one of the many individuals that was there, okay?

09:49AM 10 A Yes.

09:49AM 11 MR. AKINA: Your Honor, I would object to this being
09:49AM 12 played in the presence of the jury without the witness having
09:49AM 13 an opportunity to identify it or review it.

09:49AM 14 THE COURT: I thought that's what we were doing.

09:49AM 15 MR. KENNEDY: That is what I was doing. And if we can
09:49AM 16 just do it without the sound.

09:49AM 17 THE COURT: Yes.

09:49AM 18 MR. KENNEDY: So that only Mr. Kimoto can view it, but
09:49AM 19 the jury -- to see if he is familiar with it, and then I'll ask
09:50AM 20 you some follow-up questions.

09:50AM 21 (Video was played without the sound for the witness.)

09:50AM 22 BY MR. KENNEDY:

09:50AM 23 Q Sir, do you recall ever being out at a house with a group
09:50AM 24 of people, 50 or more, with a training with Mr. Wes Otani?

09:50AM 25 A Yes, I do recall that.

09:51AM 1 Q Okay. Does this look like a training that you personally
09:51AM 2 attended?

09:51AM 3 A Yes.

09:51AM 4 Q Okay. And as we're just looking at it, their training was
09:51AM 5 outside of the house in terms of what to look for, correct?

09:51AM 6 A Yes.

09:51AM 7 Q Going around the house to determine the problems and
09:51AM 8 things that come up when you're fumigating, correct?

09:51AM 9 A That's correct.

09:51AM 10 Q Going inside the house to talk about problems that arise
09:51AM 11 inside the house?

09:51AM 12 A Correct.

09:51AM 13 Q And then down in the basement making certain placement of
09:51AM 14 fans and other things, correct?

09:51AM 15 A Correct.

09:51AM 16 Q All right. And so you personally believe you were at this
09:51AM 17 training?

09:51AM 18 A Yes.

09:51AM 19 MR. KENNEDY: Okay. We can stop it now.

09:51AM 20 At this time, Your Honor, I would move 5003-009
09:51AM 21 through 5003-12 into evidence.

09:52AM 22 MR. AKINA: Objection. Hearsay.

09:52AM 23 MR. KENNEDY: I would say that, Your Honor -- do
09:52AM 24 this -- I'm sorry, Your Honor, I didn't hear the Court's
09:52AM 25 ruling, and I started to jump the gun. I apologize.

09:52AM 1 THE COURT: Yes, so 5000-9 -- 5003-9 is admitted.
09:52AM 2 (Exhibit 5003-9 was received in evidence.)
09:52AM 3 THE COURT: The objection is overruled. There is no
09:52AM 4 foundation -- I don't know what 5003-10, 11 or 12 depict. We
09:52AM 5 have asked the witness not one thing about any of those three.
09:52AM 6 MR. KENNEDY: Let's pull up 5003-10 since --
09:52AM 7 THE COURT: I know you said it was a four-part
09:52AM 8 training.
09:52AM 9 MR. KENNEDY: I do.
09:52AM 10 THE COURT: I was listening, but I don't know if --
09:52AM 11 MR. KENNEDY: I agree.
09:52AM 12 THE COURT: -- 10, 11, 12 are parts 2, 3 and 4 or not.
09:52AM 13 MR. KENNEDY: You are right. And so I'm pulling up
09:52AM 14 5003-010 so that Mr. Kimoto can look at it.
09:52AM 15 BY MR. KENNEDY:
09:53AM 16 Q Sir, do you see what has been previously marked as
09:53AM 17 5003-010?
09:53AM 18 A Yes.
09:53AM 19 Q Do you recognize Wes Otani?
09:53AM 20 A Yes, I do.
09:53AM 21 Q Is it around the house at a different location talking
09:53AM 22 about different issues involved with fumigation?
09:53AM 23 A Yes.
09:53AM 24 Q And this is a training that you personally were at?
09:53AM 25 A Yes. I'm actually in this video at the beginning.

09:53AM 1 Q And I think you said you were actually in the -- in the
09:53AM 2 picture at this point.

09:53AM 3 A Not at this point, but --

09:53AM 4 Q But earlier.

09:53AM 5 A Earlier, yes.

09:53AM 6 MR. KENNEDY: Your Honor, I move 5003-010 into
09:53AM 7 evidence.

09:53AM 8 THE COURT: Same objection, Counsel?

09:53AM 9 MR. AKINA: Yes, Your Honor.

09:53AM 10 THE COURT: All right. Same ruling. Overruled.
09:53AM 11 5003-10 is admitted.

09:53AM 12 (Exhibit 5003-010 was received in evidence.)

09:53AM 13 MR. KENNEDY: Let's move on to 5003-011.

09:53AM 14 BY MR. KENNEDY:

09:53AM 15 Q Do you recognize Wes Otani?

09:54AM 16 A Yes, I do.

09:54AM 17 Q Is this the same training?

09:54AM 18 A This is the same training.

09:54AM 19 Q And you are personally still at this training?

09:54AM 20 A Yes.

09:54AM 21 Q He's inside the house now?

09:54AM 22 A Correct.

09:54AM 23 Q All right. And so we're at a different portion of it.

09:54AM 24 MR. KENNEDY: At this time, Your Honor, I'd move
09:54AM 25 5003-11 into evidence.

09:54AM 1 MR. AKINA: Same objection.

09:54AM 2 THE COURT: All right. Same ruling. Objection is
09:54AM 3 overruled. The exhibit is admitted, 5003-11.

09:54AM 4 (Exhibit 5003-011 was received in evidence.)

09:54AM 5 MR. KENNEDY: Moving on to 5003-12. If you could just
09:54AM 6 play it for Mr. Kimoto.

09:54AM 7 (Video played.)

09:54AM 8 BY MR. KENNEDY:

09:54AM 9 Q Do you recognize Wes Otani?

09:54AM 10 A Yes.

09:54AM 11 Q Same training?

09:54AM 12 A Same training.

09:54AM 13 Q Looks like we're at a different location in the house?

09:54AM 14 A Correct.

09:54AM 15 Q Regarding -- are you still at the training?

09:54AM 16 A Yes, I believe so.

09:54AM 17 MR. KENNEDY: All right. At this time, Your Honor, I
09:55AM 18 would move 5003-12 into evidence.

09:55AM 19 MR. AKINA: Same objection, hearsay.

09:55AM 20 THE COURT: All right. Same ruling, the objection is
09:55AM 21 overruled. 5003-12 is admitted.

09:55AM 22 And now you may publish any or all of those four
09:55AM 23 exhibits, 5003-9 through 5003-12.

09:55AM 24 (Exhibit 5003-012 was received in evidence.)

09:55AM 25 MR. KENNEDY: Thank you, Your Honor.

09:55AM 1 Let's start with 5003-009.

09:55AM 2 (Video played.)

09:55AM 3 BY MR. KENNEDY:

09:55AM 4 Q So this training is about termite fumigation; is that
09:55AM 5 correct, sir?

09:55AM 6 A Yes.

09:55AM 7 Q Do you see Delia Fabro-Miske in the picture?

09:59AM 8 A Yes.

09:59AM 9 Q So now the folks here are folks who are workers at
10:03AM 10 Kama'aina Termite and Pest Control?

10:04AM 11 A Yes, I believe both companies.

10:04AM 12 Q Both companies are there, right?

10:04AM 13 A Yes.

10:04AM 14 Q Wes Otani is a distributor with Douglas, correct?

10:04AM 15 A Yes.

10:04AM 16 Q You could see Vikane on his shirt, right?

10:04AM 17 A Yes.

10:04AM 18 Q And Mr. Miske has put on this training for his workers,
10:04AM 19 correct?

10:04AM 20 A Correct.

10:04AM 21 Q All right. And so Mr. Otani is asking questions rather
10:04AM 22 than just giving answers, right?

10:04AM 23 A Yes.

10:04AM 24 Q So he's opening it up so that there is a give and take,
10:04AM 25 right?

10:04AM 1 A Correct.

10:04AM 2 Q So that everybody learns what problems can arise, right?

10:04AM 3 A Yes.

10:04AM 4 Q And that it's not so simple that it's -- if it's just a

10:04AM 5 bush, what do you do, right?

10:04AM 6 A Correct.

10:04AM 7 Q How far do you keep the tarp, correct?

10:04AM 8 A Yes.

10:04AM 9 Q And so this is something you needed to know in terms of

10:04AM 10 sales so that you could communicate to customers, right?

10:04AM 11 A Yes.

10:04AM 12 Q All right.

10:05AM 13 MR. KENNEDY: Moving on to 5003-010.

10:05AM 14 Looks like we lost our sound.

10:05AM 15 (Video played.)

10:05AM 16 BY MR. KENNEDY:

10:05AM 17 Q Up on the deck, do you see Delia Fabro-Miske?

10:05AM 18 A Yes.

10:05AM 19 Q When he's mentioning George, is it George Perry?

10:06AM 20 A Correct.

10:06AM 21 Q So the cubing deals with the amount of gas that is needed

10:07AM 22 within the tent structure, correct?

10:07AM 23 A Yes, the cubing is the measurement of the home.

10:07AM 24 Q So what was pointed out there is you needed a ground seal

10:07AM 25 to make certain that the gas that's shot into the structure

10:07AM 1 remains in the structure to kill termites and pests, right?

10:08AM 2 A Yes.

10:08AM 3 Q And that the distance the tarp would be out adds to the

10:08AM 4 cubing when you're doing the measurements to determine how much

10:08AM 5 gas to use, right?

10:08AM 6 A Correct.

10:08AM 7 Q And the type of pests that you're dealing with can change

10:08AM 8 the amount of gas that is needed, correct?

10:08AM 9 A Correct.

10:08AM 10 Q So all of those factors go into, as Mr. Otani said,

10:08AM 11 getting the kill, right?

10:08AM 12 A Correct.

10:08AM 13 Q Because what the customer wants, whether it's a business

10:08AM 14 or whether it's a home, is the pests dead and don't come back,

10:08AM 15 right?

10:08AM 16 A The pests dead. We can't -- we can't guarantee them not

10:08AM 17 coming back.

10:08AM 18 Q The only thing about the island is that at some point

10:08AM 19 you'll have to do something to eliminate the pests. It will

10:08AM 20 kill them for a time, correct?

10:08AM 21 A Yes, correct.

10:08AM 22 MR. KENNEDY: Please continue, and I apologize.

10:17AM 23 (Video played.)

10:17AM 24 THE COURT: Could you pause the video, please?

10:17AM 25 MR. KENNEDY: Please pause.

10:17AM 1 THE COURT: How much playing time does this exhibit
10:17AM 2 have remaining?

10:17AM 3 MR. KENNEDY: I don't see it on the bottom, Your
10:17AM 4 Honor. I would have to check --

10:17AM 5 THE COURT: All right. That's why I'm asking.

10:17AM 6 MR. KENNEDY: Do you happen to have that, Ms. King?

10:17AM 7 MS. KING: Two more minutes.

10:17AM 8 MR. KENNEDY: Two more minutes.

10:17AM 9 THE COURT: All right. Let's go ahead and finish it
10:17AM 10 then, and then we'll take a break. Go ahead. Thank you.

10:17AM 11 (Video played.)

10:19AM 12 THE COURT: All right. So let's go ahead and -- now
10:19AM 13 that this particular exhibit has completed playing, that's -10,
10:19AM 14 we'll go ahead and take our first break of the day.

10:19AM 15 As we do so, I know all of our jurors have missed me
10:19AM 16 saying this, but please refrain from discussing the substance
10:19AM 17 of this case with anyone, including each other, until I advise
10:19AM 18 otherwise; do not access any media or other accounts of this
10:19AM 19 case that may be out there; and then finally, do not conduct
10:19AM 20 any independent investigations into the facts, circumstance or
10:19AM 21 persons involved.

10:19AM 22 Let's take about a 15-minute break, and then we will
10:19AM 23 resume with Mr. Kimoto at that time.

10:20AM 24 (Proceedings were recessed at 10:20 a.m. to 10:44
10:44AM 25 a.m.)

10:44AM 1 THE COURT: All right. Back from our first morning
10:44AM 2 break.
10:44AM 3 Mr. Ott, got used to your new seat there?
10:44AM 4 So we were in the middle of the series of four videos
10:45AM 5 that Mr. Kennedy was playing.
10:45AM 6 And so you're free to resume whenever you're ready.
10:45AM 7 MR. KENNEDY: Thank you, sir.
10:45AM 8 If we could pull up 5003-011.
10:45AM 9 And publish it to the jury?
10:45AM 10 THE COURT: You may. This has been admitted.
10:45AM 11 (Video was played for the jury.)
10:45AM 12 BY MR. KENNEDY:
10:54AM 13 Q Sir, he's talking about in this introductory portion of
10:55AM 14 5003-011 about Vikane and the gas, and what you need to do
10:55AM 15 inside the home, correct?
10:55AM 16 A Yes.
10:55AM 17 Q And so you were at this. And the jury has it in evidence.
10:55AM 18 He's going to answer questions about what to do inside the
10:55AM 19 house in this area for close to 48 minutes, so I'm not going
10:55AM 20 play it all for the jury.
10:55AM 21 But this is to educate both Kama'aina's and O'ahu's
10:55AM 22 individuals working for Mr. Miske, correct?
10:55AM 23 A Correct.
10:55AM 24 Q And so this is a give and take so everyone can understand
10:55AM 25 the details and how someone like Wes Otani at Douglas Products

10:55AM 1 to reach out to, to ask these technical questions and make
10:55AM 2 certain that everybody understands how to do the job right,
10:55AM 3 correct?

10:55AM 4 A Correct.

10:55AM 5 MR. KENNEDY: All right. If we move on to just
10:55AM 6 5003-12.

10:56AM 7 (Continued playing of the video.)

10:59AM 8 BY MR. KENNEDY:

11:00AM 9 Q So inside the house, the earlier one -- the jury will have
11:00AM 10 this -- that was 48 minutes, and we watched a little of it.
11:00AM 11 For this portion is another 24 minutes. So we're spending
11:00AM 12 close to an hour and a half just talking about what to do
11:00AM 13 inside the house to make certain you have the gas right, the
11:00AM 14 aeration right, the area covered, so that in the end the
11:00AM 15 fumigation is done correct.

11:00AM 16 A Correct.

11:00AM 17 Q And part of this is there are -- I think you know --
11:01AM 18 Department of Agricultural folks there at this training for
11:01AM 19 watching Wes Otani teach the skills necessary for folks
11:01AM 20 involved in fumigation, correct?

11:01AM 21 A I don't know. I know there was one person that I didn't
11:01AM 22 recognize at this training session, but I don't know what -- I
11:01AM 23 mean where he worked or what he was there for.

11:01AM 24 Q All right. And did you ever get a certification or -- you
11:01AM 25 know, for that training that you attended here?

11:01AM 1 A I -- I don't remember.

11:01AM 2 Q Okay. Fair enough.

11:01AM 3 All right. So all total, we're talking over two

11:01AM 4 hours' worth of hands-on training by Mr. Miske for the folks

11:01AM 5 working for him, correct?

11:01AM 6 A Provided by Mr. Miske --

11:01AM 7 Q Yes.

11:01AM 8 A -- done by Wes Otani, correct.

11:01AM 9 Q Yes. And Wes Otani, once again, Douglas Products,

11:02AM 10 background at Terminix, and the distributor for Vikane, right?

11:02AM 11 A Yes.

11:02AM 12 Q And someone that also came to the office and gave

11:02AM 13 trainings as well, correct?

11:02AM 14 A Correct.

11:02AM 15 Q All right. I want to move to a different exhibit,

11:02AM 16 9010-101, which is a video and an audio.

11:02AM 17 Did you at sales meetings and other meetings inside

11:02AM 18 the office give training yourself?

11:02AM 19 A I don't think -- I never gave training. That wasn't my

11:02AM 20 strong point.

11:02AM 21 Q Okay. But just in terms of a meeting --

11:02AM 22 MR. KENNEDY: If we pull up Exhibit 9010-101.

11:02AM 23 BY MR. KENNEDY:

11:02AM 24 Q -- see if you recognize this before we play it.

11:02AM 25 A Yes, that is a -- that's a sales meeting.

11:02AM 1 Q Okay. Now, where is this meeting at?

11:02AM 2 A This is in the board room at the Kama'aina Termite and

11:02AM 3 Pest Control office.

11:03AM 4 Q Okay. And do you see yourself?

11:03AM 5 A Yes, I do.

11:03AM 6 Q And where are you?

11:03AM 7 A I'm standing in the front with the black shirt and I have

11:03AM 8 a hat on.

11:03AM 9 Q All right. And is this in the board room and this is a

11:03AM 10 meeting that you're having?

11:03AM 11 A Correct.

11:03AM 12 MR. KENNEDY: All right. Your Honor, at this time I

11:03AM 13 would move into evidence 9010-101.

11:03AM 14 MR. AKINA: Objection on hearsay. Also to the extent

11:03AM 15 this is a prior statement of the witness, I don't think the

11:03AM 16 foundation has been laid for it to be entered into as either

11:03AM 17 consistent or inconsistent.

11:03AM 18 THE COURT: The objection is overruled.

11:03AM 19 Is this on one of your exhibit lists?

11:03AM 20 MS. PANAGAKOS: Yes.

11:03AM 21 MR. KENNEDY: It should be.

11:03AM 22 THE COURT: Which one?

11:03AM 23 MR. KENNEDY: It should be I believe on the

11:03AM 24 supplemental.

11:03AM 25 THE COURT: Which one?

11:03AM 1 MS. PANAGAKOS: The third supplemental, Your Honor.

11:03AM 2 And it's -- the exhibits on the list were added to the binder.

11:04AM 3 THE COURT: Well, we'll resolve it later on. I don't

11:04AM 4 have it.

11:04AM 5 9010-101 is admitted. You may publish.

11:04AM 6 (Exhibit 9010-101 was received in evidence.)

11:04AM 7 MR. KENNEDY: Looks like we have lost the sound.

11:04AM 8 (Video was played for the jury.)

11:04AM 9 BY MR. KENNEDY:

11:05AM 10 Q Sir, you're talking at this meeting about when problems

11:05AM 11 arise, correct?

11:05AM 12 A Correct.

11:05AM 13 Q And that it's always better to, you know, have

11:05AM 14 communication, right?

11:05AM 15 A Yes.

11:05AM 16 Q And so one of the things that happens, you have maybe at

11:05AM 17 Kama'aina Termite and Pest Control at points close to a hundred

11:05AM 18 people working?

11:05AM 19 A That's fair to say.

11:05AM 20 Q And so communication is key, right?

11:05AM 21 A Yes.

11:05AM 22 Q And so one of the things that was developed is a use of

11:05AM 23 signal, correct?

11:05AM 24 A Correct.

11:05AM 25 Q And a use of slack?

11:05AM 1 A Correct.

11:05AM 2 Q Can you tell the ladies and gentlemen of the jury what
11:05AM 3 signal is.

11:05AM 4 A Signal is a texting app that we -- that we use to
11:05AM 5 communicate with everybody that's in the company. There's
11:05AM 6 different categories for it. I mean office, there's managers,
11:06AM 7 technicians, fumigators, sales team.

11:06AM 8 Q What is Slack?

11:06AM 9 A Slack is another form of communication that -- texting app
11:06AM 10 that we -- that we used for the same -- for the same things.

11:06AM 11 Q So, sir, I want to show you what has been marked as
11:06AM 12 Exhibit 910-084 (sic).

11:06AM 13 MR. KENNEDY: And this has not yet been admitted, Your
11:06AM 14 Honor.

11:06AM 15 BY MR. KENNEDY:

11:06AM 16 Q Do you recognize what has been marked as 9010-084, sir?

11:06AM 17 A Yes. Phone numbers.

11:06AM 18 Q All right. And if we move to the second page. Are you
11:06AM 19 able to read that on your screen, sir?

11:06AM 20 A Can you enlarge it?

11:06AM 21 Q Absolutely.

11:06AM 22 MR. KENNEDY: Blow up the first part, Ms. King.

11:07AM 23 THE WITNESS: (Peruses document.) Yes, I read it.

11:07AM 24 BY MR. KENNEDY:

11:07AM 25 Q All right. And can you see the lower portion, sir?

11:07AM 1 A In green?

11:07AM 2 Q Yes.

11:07AM 3 A Yes.

11:07AM 4 Q All right. And then moving to the next page. Can you see
11:07AM 5 that as well?

11:07AM 6 A Yes.

11:07AM 7 Q And moving to the final page.

11:07AM 8 A Yes.

11:07AM 9 Q All right. Do you recognize it as the 2019 managers
11:07AM 10 Signal group thread?

11:07AM 11 A Yes.

11:07AM 12 MR. KENNEDY: All right. At this time I would move to
11:08AM 13 admit 910 -- 9010-084. It consists of four pages, 001 through
11:08AM 14 004, Your Honor.

11:08AM 15 THE COURT: Any objection?

11:08AM 16 MR. AKINA: No objection.

11:08AM 17 MR. KENNEDY: May I publish?

11:08AM 18 THE COURT: You may. That exhibit is admitted.
11:08AM 19 That's 9010-084.

11:08AM 20 (Exhibit 9010-084 was received in evidence.)

11:08AM 21 Q All right. So you just mentioned that this is the 2019
11:08AM 22 managers Signal thread, correct?

11:08AM 23 A Yes.

11:08AM 24 Q And so everyone who is a manager is on this thread so that
11:08AM 25 folks know what's happening at the managerial level, correct?

11:08AM 1 A Yes.

11:08AM 2 Q And you are --

11:08AM 3 MR. KENNEDY: If we blow up the top portion --

11:08AM 4 BY MR. KENNEDY:

11:08AM 5 Q -- indicated as Pres, right?

11:08AM 6 A Correct.

11:08AM 7 Q And the number is 1-808-859-2855?

11:08AM 8 A No.

11:08AM 9 Q 2822. I'm sorry.

11:08AM 10 A Correct.

11:08AM 11 Q I need to get closer.

11:09AM 12 Now, that's your iPhone 6, right?

11:09AM 13 A I don't remember what number iPhone that was, but that is
11:09AM 14 my phone number, sir.

11:09AM 15 Q And that one is an iPhone 6, not a burner phone, right?

11:09AM 16 A That one was purchased initially as a phone to be used by
11:09AM 17 only myself and Mike.

11:09AM 18 Q All right. And so it's now being used within a
11:09AM 19 companywide managers group thread, correct?

11:09AM 20 A Yes.

11:09AM 21 Q All right. And MJ is Mr. Miske?

11:09AM 22 A Yes.

11:09AM 23 Q All right. And the other managers here are listed, right?

11:09AM 24 A Correct.

11:09AM 25 MR. KENNEDY: All right. If we move to the second

11:09AM 1 page.

11:09AM 2 BY MR. KENNEDY:

11:09AM 3 Q And this is a group created, right?

11:09AM 4 A Yes.

11:09AM 5 Q So this is the 2019 version of who the managers are and

11:09AM 6 who is going to be in communication about what's happening with

11:10AM 7 Kama'aina Termite and Pest Control, correct?

11:10AM 8 A Yes.

11:10AM 9 Q And O'ahu press -- Termite and Pest Control.

11:10AM 10 A Correct.

11:10AM 11 Q I'll spit it out in a second. Thank you, sir.

11:10AM 12 So if we move to -- and then this continues for the

11:10AM 13 full year, and so on this thread we just have a few pages, but

11:10AM 14 the jobs, the issues, the things that come up are all

11:10AM 15 communicated by this use of Signal, right?

11:10AM 16 A Yes.

11:10AM 17 Q Okay. Now, within Signal you can use Slack as well,

11:10AM 18 right?

11:10AM 19 A I believe Slack is a different platform.

11:10AM 20 Q It is, but it can also then take photographs and attach it

11:10AM 21 to messages within Signal, correct?

11:10AM 22 A Yes.

11:10AM 23 Q Okay. And so I'll get to that. So in this managers

11:11AM 24 thread, from time to time something that's happening at a job

11:11AM 25 site a picture will be taken, and so the managers have the

11:11AM 1 ability to see exactly what's happening at the house, correct?

11:11AM 2 A Correct.

11:11AM 3 Q And it's like a checklist. If there are ten things you

11:11AM 4 have to do, the person goes in, they do one, take a picture;

11:11AM 5 second one, take a picture; third one, take a picture, all the

11:11AM 6 way through, and then the managers can see exactly what's going

11:11AM 7 on at the house, right?

11:11AM 8 A Correct.

11:11AM 9 Q All right.

11:11AM 10 MR. KENNEDY: Now, if we move to 9010-085, which is

11:11AM 11 not yet in evidence.

11:11AM 12 BY MR. KENNEDY:

11:11AM 13 Q Do you recognize 9010-085?

11:11AM 14 A Yes. It's a list of phone numbers.

11:11AM 15 Q Okay.

11:11AM 16 MR. KENNEDY: And then if we move to the second page.

11:11AM 17 If we blow up the top portion.

11:11AM 18 BY MR. KENNEDY:

11:11AM 19 Q And just read that to yourself.

11:11AM 20 A The one in blue?

11:12AM 21 Q The one in blue, and then you can read the one in green if

11:12AM 22 you can read it.

11:12AM 23 A (Peruses document.)

11:12AM 24 Q And just let me know when you're done.

11:12AM 25 A I'm finished.

11:12AM 1 Q Okay. Move to the third page. Can you read that or do

11:12AM 2 you need it blown up, sir?

11:12AM 3 A Just blown up a little.

11:12AM 4 Q Okay, will do.

11:12AM 5 MR. KENNEDY: Ms. King, if you can do that. Thank you

11:12AM 6 so much.

11:12AM 7 BY MR. KENNEDY:

11:12AM 8 Q On to the next page.

11:12AM 9 MR. KENNEDY: And if you could blow up the portion.

11:12AM 10 BY MR. KENNEDY:

11:12AM 11 Q And do you recognize on the fourth page a message from

11:13AM 12 you?

11:13AM 13 A Yes.

11:13AM 14 Q Okay.

11:13AM 15 MR. KENNEDY: Moving on to the fifth page.

11:13AM 16 And then on to the 6th page.

11:13AM 17 BY MR. KENNEDY:

11:13AM 18 Q All right. Do you recognize that as the 2020 new managers

11:13AM 19 Signal group thread?

11:13AM 20 A Yes.

11:13AM 21 Q All right. And so if managers change, then you create a

11:13AM 22 new thread so that each individual who is a manager has access

11:13AM 23 to everything that's going on in terms of that thread, correct?

11:13AM 24 A Correct.

11:13AM 25 Q All right.

11:13AM 1 MR. KENNEDY: At this time, Your Honor, I'd move
11:13AM 2 910-085 (sic) into evidence. It is six pages, 001 through 006.
11:13AM 3 MR. AKINA: No objection.
11:13AM 4 THE COURT: Without objection, 9010-085 is admitted.
11:13AM 5 You may publish.
11:13AM 6 (Exhibit 9010-085 was received in evidence.)
11:13AM 7 BY MR. KENNEDY:
11:13AM 8 Q Once again, this is just six pages, but during the course
11:13AM 9 of the year you would have all the communications that's going
11:13AM 10 on with managers inside that thread, correct?
11:14AM 11 A Correct.
11:14AM 12 MR. KENNEDY: Moving on to 9010-086, which is not yet
11:14AM 13 in evidence.
11:14AM 14 BY MR. KENNEDY:
11:14AM 15 Q And before I do that, both yourself and Mr. Miske were on
11:14AM 16 that thread, correct?
11:14AM 17 A This thread in front of me, sir?
11:14AM 18 Q The one from the previous one. Do you need to see it
11:14AM 19 again?
11:14AM 20 A Yes, please.
11:14AM 21 MR. KENNEDY: Okay. If we could go back to 9010-085.
11:14AM 22 THE WITNESS: Yes.
11:14AM 23 BY MR. KENNEDY:
11:14AM 24 Q All right. And so "MJ owner" is at the top, correct?
11:14AM 25 A Correct.

11:14AM 1 Q And you are indicated as "Pres Oahu," right?

11:14AM 2 A Yes.

11:14AM 3 Q At the number, the last four digits being 2822.

11:14AM 4 A Correct.

11:14AM 5 Q All right.

11:14AM 6 MR. KENNEDY: Let's move on to 910-086 (sic).

11:14AM 7 BY MR. KENNEDY:

11:14AM 8 Q Now, you mentioned there were other threads. Was there

11:15AM 9 also a sales thread for the folks who were just in the sales

11:15AM 10 area for Kama'aina Termite and Pest Control and O'ahu Termite

11:15AM 11 and Pest Control?

11:15AM 12 A Yes.

11:15AM 13 Q All right. Moving to the second page of 9010-086. Do you

11:15AM 14 need that blown up, sir?

11:15AM 15 A Yeah. (Peruses document.) I read it.

11:15AM 16 MR. KENNEDY: All right. Moving on to the next page.

11:15AM 17 Moving on to the next page.

11:15AM 18 Moving on to the next page.

11:15AM 19 And moving on to the next page.

11:15AM 20 BY MR. KENNEDY:

11:16AM 21 Q Do you recognize that as the 2020 new Signal sales group

11:16AM 22 thread?

11:16AM 23 A Yes.

11:16AM 24 Q And so that specific thread is folks like yourself who are

11:16AM 25 a manager, right?

11:16AM 1 A Correct.

11:16AM 2 Q Folks like Mr. Miske, who's the owner?

11:16AM 3 A Correct.

11:16AM 4 Q But also folks who are just sales related activities so

11:16AM 5 that everyone is on the same thread and being able to

11:16AM 6 communicate, right?

11:16AM 7 A Correct.

11:16AM 8 Q Using new technology, right?

11:16AM 9 A Correct.

11:16AM 10 Q State of the art, right?

11:16AM 11 A I don't know if it's state of the art, but --

11:16AM 12 Q But it works, doesn't it?

11:16AM 13 A -- it works.

11:16AM 14 MR. KENNEDY: I would move 9010-086 into evidence.

11:16AM 15 MR. AKINA: No objection.

11:16AM 16 THE COURT: Without objection, 9010-86 is admitted.

11:16AM 17 (Exhibit 9010-086 was received in evidence.)

11:16AM 18 MR. KENNEDY: Moving on to 9010-087, which is not yet

11:17AM 19 in evidence.

11:17AM 20 BY MR. KENNEDY:

11:17AM 21 Q Do you recognize 9010-087?

11:17AM 22 A Yes.

11:17AM 23 Q All right. Do you see "MJ owner" for Mr. Miske?

11:17AM 24 A Yes.

11:17AM 25 Q Do you see on here yourself?

11:17AM 1 A Yes, I do.

11:17AM 2 Q All right. And you are indicated as "Pres," dash,
11:17AM 3 correct?

11:17AM 4 A Pres - Oahu.

11:17AM 5 Q All right.

11:17AM 6 MR. KENNEDY: And if we go through the second page.
11:17AM 7 Moving on to the third page.
11:17AM 8 Moving on to the fourth page.
11:17AM 9 Moving on to the -- I think we are at the end. If we
11:18AM 10 go back to the front.

11:18AM 11 BY MR. KENNEDY:

11:18AM 12 Q Do you recognize this as the 2020 new fume Signal group
11:18AM 13 thread?

11:18AM 14 A Correct.

11:18AM 15 Q And "fume" is short for fumigation?

11:18AM 16 A Correct.

11:18AM 17 Q So now this is the group thread for everyone that's doing
11:18AM 18 fumigations for Kama'aina Termite and Pest Control and O'ahu
11:18AM 19 Termite and Pest Control, correct?

11:18AM 20 A Not everyone. This is just for the people that drive the
11:18AM 21 trucks and -- I mean drive the trucks for the fumigation crew.

11:18AM 22 Q Okay.

11:18AM 23 A Not all the fumigators are on this thread.

11:18AM 24 Q On this thread, it's the folks who are driving the trucks,
11:18AM 25 right?

11:18AM 1 A Driving the trucks and -- and management.

11:18AM 2 Q And management, right?

11:18AM 3 A Correct, and the fume desk.

11:18AM 4 MR. KENNEDY: And so at this time I'd move 910-087

11:18AM 5 (sic) into evidence. It is four pages, 0001 through 0004.

11:19AM 6 THE COURT: Any objection?

11:19AM 7 MR. AKINA: No objection to this exhibit.

11:19AM 8 THE COURT: Without objection, 9010-087 is admitted.

11:19AM 9 (Exhibit 9010-087 was received in evidence.)

11:19AM 10 BY MR. KENNEDY:

11:19AM 11 Q If we move just to page 3, do you see a notation there?

11:19AM 12 MS. PANAGAKOS: Counsel --

11:19AM 13 MR. KENNEDY: Can we publish?

11:19AM 14 THE COURT: You may.

11:19AM 15 BY MR. KENNEDY:

11:19AM 16 Q So on 9010-087, do you see the "kill the old fume thread
11:19AM 17 and use this thread"?

11:19AM 18 A Yes.

11:19AM 19 Q All right. And so what's happening is new people have
11:19AM 20 been added, maybe people have gone off. So you're getting rid
11:19AM 21 of what was the last year's thread so that you can start anew
11:19AM 22 each year, correct?

11:19AM 23 A No, these -- these threads could be -- it's not for
11:20AM 24 every -- like it's not annually. It could be any -- any time.

11:20AM 25 Q Okay. So you started a new thread -- if we go to page 2,

11:20AM 1 it looks like in March of 2020.

11:20AM 2 A Correct.

11:20AM 3 Q So the top message is you created the group, right?

11:20AM 4 A Yes.

11:20AM 5 Q All right. And then blow it is the individuals who are to

11:20AM 6 be added to the group, right?

11:20AM 7 A Correct.

11:20AM 8 Q All right. And Delz is on there. Is that Delia

11:20AM 9 Fabro-Miske?

11:20AM 10 A Correct.

11:20AM 11 Q All right. And so those folks have been added to this

11:20AM 12 Signal thread, correct?

11:20AM 13 A Correct.

11:20AM 14 Q All right. And so when we go to page 3, the old thread is

11:20AM 15 now stopped, and now you have a new thread because you've got

11:20AM 16 new members, so you're continually updating it to make it

11:20AM 17 current, correct?

11:20AM 18 A Correct.

11:21AM 19 MR. KENNEDY: All right. If we look at 9010-088,

11:21AM 20 which is not yet in evidence.

11:21AM 21 Look at the first page, then let's move to the second

11:21AM 22 page.

11:21AM 23 Move to the third page.

11:21AM 24 And then we can blow up the bottom portion.

11:21AM 25 BY MR. KENNEDY:

11:21AM 1 Q Do you recognize this as a 2020 companywide Signal group

11:21AM 2 thread?

11:21AM 3 A Yes, that's what --

11:21AM 4 MR. KENNEDY: Okay. At this time, Your Honor, I would

11:21AM 5 move 9010-088 into evidence.

11:21AM 6 THE COURT: Mr. Akina?

11:21AM 7 MR. AKINA: No objection.

11:21AM 8 THE COURT: Without objection, 9010-88 is admitted.

11:21AM 9 (Exhibit 9010-088 was received in evidence.)

11:22AM 10 MR. KENNEDY: May we publish?

11:22AM 11 THE COURT: You may.

11:22AM 12 BY MR. KENNEDY:

11:22AM 13 Q So the participants are listed on the first page, correct?

11:22AM 14 A Yes.

11:22AM 15 Q And then if we move to the second page, additional

11:22AM 16 participants are listed, correct?

11:22AM 17 A Yes.

11:22AM 18 Q And then if we move to the third page, additional

11:22AM 19 participants are identified?

11:22AM 20 A Correct.

11:22AM 21 MR. KENNEDY: And then if we blow up the bottom

11:22AM 22 portion.

11:22AM 23 BY MR. KENNEDY:

11:22AM 24 Q This is now on March 13th of 2020, this is a companywide

11:22AM 25 thread: "We'll add remaining employees once Signal is

11:22AM 1 downloaded on their phones." Correct?

11:22AM 2 A Correct.

11:22AM 3 Q So everyone is getting Signal downloaded on their phones

11:22AM 4 so that they can have messaging capabilities companywide,

11:22AM 5 correct?

11:22AM 6 A Correct.

11:22AM 7 Q Through manager threads, through fumigation threads,

11:23AM 8 through sales threads and companywide threads.

11:23AM 9 A Correct.

11:23AM 10 Q All right. And then if we look at a portion of this

11:23AM 11 thread -- and so the companywide thread would tend to be a

11:23AM 12 longer thread since there are more participants, correct?

11:23AM 13 A Yes, there's more -- there are definitely more

11:23AM 14 participants.

11:23AM 15 Q All right. So if we look at 9010-089, which is a portion

11:23AM 16 of that thread, do you recognize the first page, sir?

11:23AM 17 A Yes.

11:23AM 18 MR. KENNEDY: Let's move to the second page and move

11:23AM 19 to the third page.

11:23AM 20 All right. And then if we blow up the bottom portion.

11:23AM 21 BY MR. KENNEDY:

11:24AM 22 Q Okay. Do you recognize this thread that you yourself are

11:24AM 23 on?

11:24AM 24 A Yes.

11:24AM 25 MR. KENNEDY: All right. At this time, Your Honor, I

11:24AM 1 would move 9010-089 into evidence, which is ten pages, 001
11:24AM 2 through 0010.
11:24AM 3 THE COURT: Any objection?
11:24AM 4 MR. AKINA: No objection.
11:24AM 5 THE COURT: 9010-89 is admitted.
11:24AM 6 (Exhibit 9010-089 was received in evidence.)
11:24AM 7 THE COURT: You may publish.
11:24AM 8 MR. KENNEDY: Can we publish, please? Thank you.
11:24AM 9 All right. If we move through the first page. Then
11:24AM 10 to the second page. Then to the third page.
11:24AM 11 And then if we blow up the portion that is in green,
11:24AM 12 please, Ms. King.
11:24AM 13 BY MR. KENNEDY:
11:24AM 14 Q All right. Do you see that sales team, "We are going to
11:24AM 15 try and push fumigation with Coronavirus fogging treatment as
11:25AM 16 an add-on for your information."
11:25AM 17 Do you see that?
11:25AM 18 A Yes.
11:25AM 19 Q Okay. And the video that we saw was an example at the
11:25AM 20 King's Chapel of what we're talking about here in terms of
11:25AM 21 fogging treatment, correct?
11:25AM 22 A Correct.
11:25AM 23 MR. KENNEDY: All right. If we move to the sixth
11:25AM 24 page.
11:25AM 25 BY MR. KENNEDY:

11:25AM 1 Q Do you see -- if we blow up the top portion, do you see
11:25AM 2 that there is an attachment inside the Signal, which is a
11:25AM 3 document that is attached?

11:25AM 4 A Yes.

11:25AM 5 Q And then there's a thread that if this wasn't a piece of
11:25AM 6 paper with a computer or a phone, you can click on it, and then
11:25AM 7 you're able to see what is attached, right?

11:25AM 8 A Yes.

11:25AM 9 Q All right. And it's very small there. So if we move to
11:25AM 10 page 10, this would be what was shown in that attachment, just
11:26AM 11 printed out so that it can be a PDF, because we're not using
11:26AM 12 the internet to click and be able to pull it right out of the
11:26AM 13 thread like you would on your phone, correct?

11:26AM 14 A Correct.

11:26AM 15 Q All right. So this is the disinfectant that was shown in
11:26AM 16 that video at King's Chapel, correct?

11:26AM 17 A I believe so, yeah.

11:26AM 18 Q And so the label itself indicates that this Nisus -- if
11:26AM 19 I'm pronouncing it correct, N-I-S-U-S, D-S-V -- is a broad
11:26AM 20 spectrum disinfectant sanitizer.

11:26AM 21 MR. KENNEDY: All right. And then if we go down a
11:26AM 22 little bit with the pullout, Ms. King.

11:26AM 23 Okay. If we go up a little higher.

11:26AM 24 BY MR. KENNEDY:

11:26AM 25 Q Okay. Can be used for everyday cleanings, but then DSV is

11:26AM 1 also labeled to kill the following pathogens on hard nonporous
11:27AM 2 surfaces, and then there's an indication of human Coronavirus,
11:27AM 3 correct?

11:27AM 4 A Correct.

11:27AM 5 MR. KENNEDY: All right. And if we move down on this
11:27AM 6 label. If we keep going. Keep going. Okay.

11:27AM 7 BY MR. KENNEDY:

11:27AM 8 Q So then the company N-I-S-U-S, Nisus, there's an asterisk
11:27AM 9 next to it, and EPA has determined that Nisus DSV is effective
11:27AM 10 against SARS-COVID-2, the cause of COVID-19, correct?

11:27AM 11 A Correct.

11:27AM 12 Q So that's what you were using in the video that we saw
11:27AM 13 when everybody was still locked down and cleaning the church,
11:27AM 14 correct?

11:27AM 15 A Yes.

11:27AM 16 Q And so the Signal thread allowed that to be attached so
11:27AM 17 that everyone on that thread could see that, the information
11:27AM 18 would go out companywide, right?

11:27AM 19 A Yes.

11:28AM 20 MR. KENNEDY: Now, if we move to 9010-090.

11:28AM 21 BY MR. KENNEDY:

11:28AM 22 Q You recognize this? And "this," I mean 9010-090.

11:28AM 23 A Yes.

11:28AM 24 MR. KENNEDY: Moving to the second page.

11:28AM 25 Moving to the third page.

11:28AM 1 And moving to the fourth page.

11:28AM 2 BY MR. KENNEDY:

11:28AM 3 Q Is that the 2020 office Signal group thread?

11:28AM 4 A Yes.

11:28AM 5 Q All right. And so this is just another thread to make
11:28AM 6 certain that other folks who are generally just in the office
11:28AM 7 helping to schedule jobs are on a thread and can communicate
11:28AM 8 with all the folks that they need to that are on this list,
11:28AM 9 correct?

11:28AM 10 A Correct.

11:28AM 11 Q And so Mr. Miske is listed on the first page.

11:29AM 12 MR. KENNEDY: And at this point I would move 9010-090
11:29AM 13 into evidence, Your Honor.

11:29AM 14 MR. AKINA: No objection.

11:29AM 15 THE COURT: Without objection, 9010-90 is admitted.

11:29AM 16 (Exhibit 9010-090 was received in evidence.)

11:29AM 17 Q Now, that I've published it, and the jury can see it, up
11:29AM 18 at the top "MJ owner" for Mr. Miske?

11:29AM 19 A Correct.

11:29AM 20 Q D-E-L-Z, Delz, is Delia Fabro-Miske?

11:29AM 21 A Correct.

11:29AM 22 Q All right. Down one, two, three is yourself, Pres-Oahu?

11:29AM 23 A Correct.

11:29AM 24 Q All right. And so the three of you are also on the office
11:29AM 25 group thread so that -- and everyone else here can see what's

11:29AM 1 happening inside the office to make certain we're coordinating
11:29AM 2 everything so that the business is run right, correct?
11:29AM 3 A Correct.
11:29AM 4 Q All right. Now, we talked about Signal. Inside the
11:29AM 5 office you also used WhatsApp, correct?
11:30AM 6 A I believe so, but I don't remember using it -- I don't
11:30AM 7 remember using it for a while.
11:30AM 8 Q Okay.
11:30AM 9 MR. KENNEDY: If we pull up 91 -- excuse me --
11:30AM 10 9010-091.
11:30AM 11 BY MR. KENNEDY:
11:30AM 12 Q And let's see if you recognize that.
11:30AM 13 A Yes, I do.
11:30AM 14 MR. KENNEDY: All right. Moving to the second page.
11:30AM 15 And moving to the third page.
11:30AM 16 Moving to the fourth page.
11:30AM 17 Moving to the fifth page.
11:30AM 18 The sixth page. Seventh page. The eighth page. The
11:31AM 19 ninth page.
11:31AM 20 BY MR. KENNEDY:
11:31AM 21 Q Sir, is this an example of the WhatsApp 2020 companywide
11:31AM 22 group thread?
11:31AM 23 A Yes.
11:31AM 24 MR. KENNEDY: At this time I would move 9010-091 into
11:31AM 25 evidence.

11:31AM 1 THE COURT: Any objection?

11:31AM 2 MR. AKINA: No objection.

11:31AM 3 THE COURT: 9010-91 is admitted without objection.

11:31AM 4 (Exhibit 9010-91 was received in evidence.)

11:31AM 5 MR. KENNEDY: All right. May we publish?

11:31AM 6 THE COURT: You may.

11:31AM 7 BY MR. KENNEDY:

11:31AM 8 Q Okay. And so on the first page, once again we have the

11:31AM 9 individuals who are on the thread?

11:31AM 10 A Correct.

11:31AM 11 Q The administrator of this is Napua, right, at the top?

11:31AM 12 A Correct.

11:31AM 13 Q And then Delz is on here, Delia Fabro-Miske?

11:31AM 14 A Correct.

11:31AM 15 Q All right. As we move down, PK is on there, correct,

11:31AM 16 Brian Marinas?

11:31AM 17 A Correct.

11:31AM 18 Q All right. MJ is Mr. Miske?

11:31AM 19 A Correct.

11:31AM 20 Q All right.

11:31AM 21 MR. KENNEDY: As we keep moving. All right. If we

11:31AM 22 move to the next page.

11:32AM 23 And if we blow up underneath what I believe was in

11:32AM 24 blue for the jury.

11:32AM 25 BY MR. KENNEDY:

11:32AM 1 Q Okay. So Napua has created the group companywide here?

11:32AM 2 A Yes.

11:32AM 3 Q All right. And then there is a system message that comes

11:32AM 4 after its created, right?

11:32AM 5 A Yes.

11:32AM 6 Q Okay. So for a business, that means that no one can

11:32AM 7 obtain these communications on a competing business, right?

11:32AM 8 A No.

11:32AM 9 Q And so that's one reason that it is used, right, to keep

11:32AM 10 communication within the business from folks who are

11:32AM 11 competitors, right?

11:32AM 12 A I don't know if that's true or not, but it was used to

11:33AM 13 communicate within the company.

11:33AM 14 Q All right.

11:33AM 15 A I don't know what the reasons were for it.

11:33AM 16 Q Okay. It was just used.

11:33AM 17 A Correct.

11:33AM 18 Q And then there is this system message that comes up that

11:33AM 19 just says: "Message -- messages and calls are end to end

11:33AM 20 encrypted. No one outside of this chat, not even WhatsApp" --

21 THE COURT REPORTER: If you are reading, you will need
22 to slow down.

23 MR. KENNEDY: I can, and I apologize.

24 BY MR. KENNEDY:

25 Q "Messages and calls are end to end encrypted. No one

11:33AM 1 outside of this chat, not even WhatsApp, can read or listen to
11:33AM 2 them. Tap to learn more."

11:33AM 3 That comes up as a system message once you create the
11:33AM 4 group, right?

11:33AM 5 A Correct.

11:33AM 6 Q Okay. If we move on then to -- move through to the next
11:33AM 7 page. There is once again the ability to provide attachments,
11:33AM 8 correct?

11:33AM 9 A Yes.

11:33AM 10 MR. KENNEDY: All right. And then if we move to the
11:34AM 11 next page.

11:34AM 12 And then to the next page. And then to 6.

11:34AM 13 BY MR. KENNEDY:

11:34AM 14 Q There is also another attachment, right?

11:34AM 15 A Yes.

11:34AM 16 Q And so that means within the company, everyone that has
11:34AM 17 their phones can then click on those attachments and see
11:34AM 18 photographs, not just words and texts, right?

11:34AM 19 A Correct.

11:34AM 20 Q All right. So if we move to page 7, then we can see the
11:34AM 21 progress with this tenting of this building, correct?

11:34AM 22 A Correct.

11:34AM 23 Q As one of the attachments that an individual can just
11:34AM 24 click on that, and then they're able to see what's happening at
11:34AM 25 a location where they're not at, right?

11:34AM 1 A Correct.

11:34AM 2 MR. KENNEDY: All right. Move to the next.

11:34AM 3 BY MR. KENNEDY:

11:34AM 4 Q And then we can see the progress on this tenting of this
11:34AM 5 building, correct?

11:34AM 6 A Correct.

11:34AM 7 Q And in there you can see the boom truck that is being used
11:35AM 8 that Kama'aina Termite and Pest Control had for these type of
11:35AM 9 jobs that no one else on the island was doing, correct?

11:35AM 10 A Correct.

11:35AM 11 Q And moving to the last, now you have another picture that
11:35AM 12 can be communicated to everyone on the thread to see where they
11:35AM 13 are at this job in real time on their phone, right?

11:35AM 14 A Yes.

11:35AM 15 MR. KENNEDY: Moving to 9010-092.

11:35AM 16 BY MR. KENNEDY:

11:35AM 17 Q Do you see the first page?

11:35AM 18 A Yes.

11:35AM 19 Q All right. Do you recognize that first page?

11:35AM 20 A Yes.

11:35AM 21 MR. KENNEDY: Moving to the second page. And then the
11:35AM 22 third page.

11:35AM 23 BY MR. KENNEDY:

11:35AM 24 Q Do you recognize what is 9010-092?

11:35AM 25 A Yes, a list of numbers.

11:35AM 1 Q Okay. Is this the WhatsApp 2020 managers group thread?

11:36AM 2 A Yes.

11:36AM 3 MR. KENNEDY: Okay. At this time I would move

11:36AM 4 9010-092 into evidence.

11:36AM 5 MR. AKINA: No objection.

11:36AM 6 THE COURT: 9010-92 is admitted without objection.

11:36AM 7 (Exhibit 9010-092 was received in evidence.)

11:36AM 8 MR. KENNEDY: May we publish?

11:36AM 9 THE COURT: Yes.

11:36AM 10 BY MR. KENNEDY:

11:36AM 11 Q So on the terms of the participants on the first page, MJ

11:36AM 12 is Mr. Miske?

11:36AM 13 A Correct.

11:36AM 14 Q Preston 2 is yourself?

11:36AM 15 A The -- yes.

11:36AM 16 Q All right. Burton is on there?

11:36AM 17 A Correct.

11:36AM 18 Q Burton Kong, right?

11:36AM 19 A Yes.

11:36AM 20 Q Delz is on there, Delia Fabro-Miske?

11:36AM 21 A Correct.

11:36AM 22 Q Napua, who is the administrator of this thread, is on

11:36AM 23 there?

11:36AM 24 A Correct.

11:36AM 25 Q PK, Brian Marinas is on there, right?

11:36AM 1 A Yes.

11:36AM 2 Q And then JRGM is on there, correct?

11:37AM 3 A Yes.

11:37AM 4 Q Okay.

11:37AM 5 MR. KENNEDY: Could we move to the next page.

11:37AM 6 And if we blow up the top page.

11:37AM 7 BY MR. KENNEDY:

11:37AM 8 Q This is a thread that Napua is creating for the managers,

11:37AM 9 correct?

11:37AM 10 A Yes.

11:37AM 11 Q In WhatsApp, right?

11:37AM 12 A Yes.

11:37AM 13 MR. KENNEDY: All right. We can take down 9010-092.

11:37AM 14 BY MR. KENNEDY:

11:37AM 15 Q I want to ask you some questions about Slack, okay?

11:37AM 16 A Okay.

11:37AM 17 Q All right. When you're using Slack, it's another

11:37AM 18 communication device, correct?

11:37AM 19 A Yes.

11:37AM 20 Q And it has many different channels, right?

11:37AM 21 A Yes.

11:37AM 22 Q You can program over a hundred channels, right?

11:37AM 23 A That sounds correct.

11:37AM 24 Q All right. And so within Kama'aina Termite and Pest

11:37AM 25 Control and O'ahu Termite and Pest Control you had a clearance

11:38AM 1 channel, right?

11:38AM 2 A Um, I don't understand what that is.

11:38AM 3 Q A clearance channel is a channel devoted to the steps that

11:38AM 4 are taken before you clear a property and turn it over to the

11:38AM 5 homeowner. Do you remember that clearance channel?

11:38AM 6 A Oh, yes.

11:38AM 7 Q Okay. So you have a specific channel that's there for

11:38AM 8 clearance, right?

11:38AM 9 A For clearing the homes, yes.

11:38AM 10 Q And the individual who's doing it has a series of steps,

11:38AM 11 and they take a picture to document that the steps are being

11:38AM 12 done, correct?

11:38AM 13 A Correct.

11:38AM 14 Q And so anyone on the channel doesn't have to just take

11:38AM 15 their word, they can click on an attachment, see step 1, done;

11:38AM 16 step 2, done; step 3, done, correct?

11:38AM 17 A Correct. But I don't believe that I was -- I don't

11:38AM 18 remember being on that channel and seeing all of those pictures

11:38AM 19 and what you're explaining to the jury.

11:39AM 20 Q I remember that you might not have been, but of course, if

11:39AM 21 it was a home that you were doing, you were waiting for that

11:39AM 22 information so that you could go to the homeowner or whoever

11:39AM 23 that you were the salesperson to tell them it was now clear,

11:39AM 24 everything is ready to go, you can get back into the home,

11:39AM 25 right?

11:39AM 1 A Not necessarily all of my homes. But it wasn't my job to
11:39AM 2 give because I didn't know when the home got uncovered, and I
11:39AM 3 didn't know when they cleared the house. So it wasn't -- it
11:39AM 4 was up to another person in the office to call the customer and
11:39AM 5 let them know that -- that their home was safe to return.
11:39AM 6 Q Okay. So it's your customer, so someone working in the
11:39AM 7 office did that for you.
11:39AM 8 A They did that for everybody.
11:39AM 9 Q And yourself if it was your sales.
11:39AM 10 A Correct.
11:39AM 11 Q Okay. There was also a fumigation channel, right?
11:39AM 12 A Yes.
11:39AM 13 Q There was a fumigation shoot channel, correct?
11:39AM 14 A I -- I don't -- I don't remember seeing a fumigation shoot
11:40AM 15 channel.
11:40AM 16 Q Okay. And George Perry had that fumigation truck,
11:40AM 17 correct?
11:40AM 18 A He had one of the trucks.
11:40AM 19 Q And on that truck they could shoot the gas, correct?
11:40AM 20 A Yes.
11:40AM 21 Q The Vikane, right?
11:40AM 22 A They carried the Vikane gas.
11:40AM 23 Q Right. So if you have a number of trucks, trucks can go
11:40AM 24 out, tent the property, get it ready for the gas to be shot,
11:40AM 25 correct?

11:40AM 1 A Correct.

11:40AM 2 Q Then George Perry can bring his crew there, he has the

11:40AM 3 Vikane gas, it's ready to go, it's a team effort. He hooks it

11:40AM 4 up, and then makes certain that the Vikane gas is then shot,

11:40AM 5 correct?

11:40AM 6 A That would be ideal.

11:40AM 7 Q Okay. There were companywide Slack channels, correct?

11:40AM 8 A Yes.

11:40AM 9 Q Managers-wide Slack channels, right?

11:40AM 10 A Yes.

11:40AM 11 Q Safety compliance channels with Slack?

11:40AM 12 A Yes.

11:40AM 13 Q Sales, correct?

11:40AM 14 A Correct.

11:40AM 15 Q Marketing?

11:41AM 16 A Correct.

11:41AM 17 Q Open projects?

11:41AM 18 A Um, I apologize. I don't remember.

11:41AM 19 Q It's okay. If you don't remember, you don't remember.

11:41AM 20 And a technical one for technical issues, right?

11:41AM 21 A Yes.

11:41AM 22 Q And office, right?

11:41AM 23 A Correct.

11:41AM 24 Q And then within Slack there were files that could keep the

11:41AM 25 documents of the photographs so that if there's any question,

11:41AM 1 you have a visual image to show what was done inside the home,

11:41AM 2 correct?

11:41AM 3 A That might be on the fumigation Slack, but I -- I didn't

11:41AM 4 see -- I don't remember seeing all the steps that the

11:41AM 5 fumigation crew took and the pictures that they also took.

11:41AM 6 Q All right. You just knew that that was a channel that was

11:41AM 7 used for that purpose.

11:41AM 8 A There may -- yeah, there may have been a channel that was

11:41AM 9 used for that purpose.

11:42AM 10 Q Okay. And then Slack allowed you to have direct messaging

11:42AM 11 like you would on an any other communication platform, right?

11:42AM 12 A Correct.

11:42AM 13 Q And then individuals like yourself had a channel, right?

11:42AM 14 A You mean for the company?

11:42AM 15 Q Yeah, on Slack.

11:42AM 16 A Correct.

11:42AM 17 Q Mr. Miske had one, correct?

11:42AM 18 A Correct.

11:42AM 19 Q Delia Fabro-Miske had one?

11:42AM 20 A Correct.

11:42AM 21 Q Mike Warden had one?

11:42AM 22 A Correct.

11:42AM 23 Q George Perry had one?

11:42AM 24 A Correct.

11:42AM 25 Q Larry Kapu had one?

11:42AM 1 A Correct.

11:42AM 2 Q Individuals had their own channels as well that they could
11:42AM 3 communicate, correct?

11:42AM 4 A Yes.

11:42AM 5 MR. KENNEDY: So if we pull up 9010-093.

11:42AM 6 BY MR. KENNEDY:

11:42AM 7 Q Do you recognize what is marked as 9010-093?

11:42AM 8 A Yes.

11:42AM 9 Q Is it a Slack image of photographs taken on a Slack
11:43AM 10 fumigation channel for Kama'aina Termite and Pest Control?

11:43AM 11 A Yes -- well, that's what -- what's what the door tag says.

11:43AM 12 MR. KENNEDY: At this time I would move 9010-094 (sic)
11:43AM 13 into evidence.

11:43AM 14 MR. AKINA: Objection, lack of foundation.

11:43AM 15 THE COURT: Sustained.

11:43AM 16 MR. KENNEDY: Let's move to 9010-095.

11:43AM 17 BY MR. KENNEDY:

11:43AM 18 Q Do you recognize 9010-095?

11:43AM 19 A Yes.

11:43AM 20 Q Is it a signal communication on the clearance channel?

11:43AM 21 A Yes.

11:43AM 22 Q Does it involve yourself?

11:43AM 23 A Yes.

11:43AM 24 Q And does it involve Cody?

11:43AM 25 A Yes.

11:43AM 1 MR. KENNEDY: At this time I would move 9010-095 into

11:43AM 2 evidence.

11:43AM 3 MR. AKINA: Objection. Hearsay.

11:44AM 4 THE COURT: Overruled. 9010-95 is admitted. You may

11:44AM 5 publish.

11:44AM 6 (Exhibit 9010-95 was received in evidence.)

11:44AM 7 BY MR. KENNEDY:

11:44AM 8 Q So 9010-095 is you -- @Cody says: "You're sending that to

11:44AM 9 Cody? I thanks, Bro."

11:44AM 10 A Yes.

11:44AM 11 Q And then Cody does -- using a fist like a fist bump,

11:44AM 12 correct?

11:44AM 13 A Correct.

11:44AM 14 Q All right. And down below Cody is able to indicate to

11:44AM 15 you: "At this address, arrived at 3:30, entered home with

11:44AM 16 specters -- spectros, and checked all areas in room."

11:44AM 17 Do you see that?

11:44AM 18 A Yes.

11:44AM 19 Q "All gas levels reading at 0 ppms." Do you see that?

11:44AM 20 A Correct.

11:44AM 21 Q "No visible damage noticed." Right?

11:44AM 22 A Yes.

11:44AM 23 Q "Collected two placards and one lockbox"?

11:45AM 24 A Yes.

11:45AM 25 Q "Confirmed with customer regarding" -- or "re entry via

11:45AM 1 phone, customer very happy and appreciative with the services

11:45AM 2 done."

11:45AM 3 A Yes.

11:45AM 4 Q All right. And in this there are photographs taken to

11:45AM 5 document what the words are in the communication, right?

11:45AM 6 A Yes.

11:45AM 7 Q Okay. Moving to 9010-096. Is this a document that you

11:45AM 8 recognize?

11:45AM 9 A Yes.

11:45AM 10 Q Does it involve Cody?

11:45AM 11 A Yes.

11:45AM 12 Q And does it involve you?

11:45AM 13 A Correct.

11:45AM 14 Q On the signal channel?

11:45AM 15 A Yes.

11:45AM 16 MR. KENNEDY: At this time I would move 9010-096 into

11:45AM 17 evidence.

11:45AM 18 THE COURT: Mr. Akina?

11:45AM 19 MR. AKINA: Same objection, Your Honor. Hearsay.

11:45AM 20 THE COURT: Objection is overruled. 9010-96 is

11:45AM 21 admitted. You may publish.

11:45AM 22 (Exhibit 9010-96 was received in evidence.)

11:46AM 23 BY MR. KENNEDY:

11:46AM 24 Q All right. So now this is for different properties?

11:46AM 25 A Correct.

11:46AM 1 Q Once again, communicating with you by words in real time
11:46AM 2 and also with photographs documenting what was done, correct?

11:46AM 3 A Yes.

11:46AM 4 Q All right. Moving down to the property down below.

11:46AM 5 So you're confirming information verbally but also
11:46AM 6 with photographs that are attached, correct?

11:46AM 7 A Yes.

11:46AM 8 MR. KENNEDY: All right. Moving to 9010-097.

11:46AM 9 BY MR. KENNEDY:

11:46AM 10 Q Do you recognize 9010-097?

11:46AM 11 A Yeah, I recognize -- I recognize my name at the bottom.

11:46AM 12 Q Okay. Is it a communication from Jason to you?

11:47AM 13 A Yes.

11:47AM 14 MR. KENNEDY: All right. At this time I move 9010-097
11:47AM 15 into evidence.

11:47AM 16 MR. AKINA: Same hearsay objection, Your Honor.

11:47AM 17 THE COURT: All right. Same ruling, overruled.
11:47AM 18 9010-097 is admitted.

11:47AM 19 (Exhibit 9010-097 was received in evidence.)

11:47AM 20 MR. KENNEDY: May we publish, Your Honor?

11:47AM 21 THE COURT: Yes, you may.

11:47AM 22 BY MR. KENNEDY:

11:47AM 23 Q All right. Here Jason is communicating on the top
11:47AM 24 portion: "Met with homeowner, gave her the key, all rooms and
11:47AM 25 fridge reading 0 ppm." Correct?

11:47AM 1 A Yes.

11:47AM 2 Q "One clam shell, three signs, 1 lb, no visible damage."

11:47AM 3 Correct?

11:47AM 4 A Correct.

11:47AM 5 Q And then there are photographs underneath, correct?

11:47AM 6 A Yes.

11:47AM 7 Q All right. Moving down to the -- in this one: "Two clam

11:47AM 8 shells, three signs, 1 lb, no visible damage at 3:35."

11:48AM 9 Similar information, correct?

11:48AM 10 A Yes.

11:48AM 11 Q Once again, showing both communication real time, but also

11:48AM 12 photographs to make certain that there is documentation of what

11:48AM 13 is done, correct?

11:48AM 14 A Correct.

11:48AM 15 MR. KENNEDY: All right. Pull this down, Ms. King.

11:48AM 16 BY MR. KENNEDY:

11:48AM 17 Q Now, I want to show you what's been marked as 9010-104.

11:48AM 18 Do you recognize what 9010-104 is?

11:48AM 19 A It looks like a house being fumigated with a Kama'aina

11:48AM 20 truck.

11:48AM 21 Q All right. Do you recognize the truck?

11:48AM 22 A Yes.

11:48AM 23 Q Is it George Perry's truck?

11:48AM 24 A I've seen him driving this truck before.

11:48AM 25 Q Okay. Do you see anything that would look like it is

11:49AM 1 carrying gas?

11:49AM 2 A Yes.

11:49AM 3 Q What do you see?

11:49AM 4 A I see on the right -- the right-hand side of the truck
11:49AM 5 there is two Vikane -- it looks like Vikane cylinders.

11:49AM 6 MR. KENNEDY: Okay. At this time I would move
11:49AM 7 9010-104 into evidence.

11:49AM 8 MR. AKINA: Lack of foundation, speculation.

11:49AM 9 THE COURT: Overruled. The exhibit is admitted,
11:49AM 10 9010-104.

11:49AM 11 (Exhibit 9010-104 was received in evidence.)

11:49AM 12 MR. KENNEDY: May we publish?

11:49AM 13 THE COURT: You may.

11:49AM 14 BY MR. KENNEDY:

11:49AM 15 Q So now you indicated that -- if you could do on the
11:49AM 16 screen, could you circle inside the truck where you see the
11:49AM 17 Vikane cylinders.

11:49AM 18 A (Witness complies.)

11:49AM 19 Q All right.

11:49AM 20 MR. KENNEDY: And then if we move to Exhibit 9010-098,
11:50AM 21 which is not yet admitted.

11:50AM 22 BY MR. KENNEDY:

11:50AM 23 Q Do you recognize the house and that truck?

11:50AM 24 A I recognize the Kama'aina tent on that house and I
11:50AM 25 recognize the truck.

11:50AM 1 MR. KENNEDY: Okay. Move 9010-098 into evidence.

11:50AM 2 MR. AKINA: No objection.

11:50AM 3 THE COURT: 9010-98 is admitted without objection.

11:50AM 4 You may publish.

11:50AM 5 (Exhibit 9010-98 was received in evidence.)

11:50AM 6 BY MR. KENNEDY:

11:50AM 7 Q And so this once again is the truck that we were just

11:50AM 8 looking at.

11:50AM 9 MR. KENNEDY: If we look at 9010-099, which is not yet

11:50AM 10 in evidence.

11:50AM 11 BY MR. KENNEDY:

11:50AM 12 Q Do you recognize from the earlier photographs the house

11:50AM 13 and the truck?

11:50AM 14 A I recognize the tents on the house and I recognize the

11:50AM 15 truck.

11:50AM 16 MR. KENNEDY: Okay. I would move 9010-099 into

11:51AM 17 evidence.

11:51AM 18 MR. AKINA: No objection.

11:51AM 19 THE COURT: 9010-99 is admitted without objection.

11:51AM 20 You may publish.

11:51AM 21 (Exhibit 9010-099 was received in evidence.)

11:51AM 22 MR. KENNEDY: May we publish?

11:51AM 23 THE COURT: Yes.

11:51AM 24 BY MR. KENNEDY:

11:51AM 25 Q All right. And then you can see the cylinders with the

11:51AM 1 Vikane gas on the right side of that truck, correct?

11:51AM 2 A Correct.

11:51AM 3 Q Over on the tented property you can see a placard, right?

11:51AM 4 A Correct.

11:51AM 5 Q All right. And so at this point it appears that the house

11:51AM 6 is fully tented, we're ready to go with shooting gas into the

11:51AM 7 house, correct?

11:51AM 8 A That's what it appears, yes.

11:51AM 9 Q Okay.

11:51AM 10 MR. KENNEDY: Let's look at 9010-100.

11:51AM 11 BY MR. KENNEDY:

11:51AM 12 Q Do you recognize what is depicted in 9010-100?

11:51AM 13 A It looks like a home with Kama'aina fumigation tents.

11:52AM 14 MR. KENNEDY: All right. At this point I would move

11:52AM 15 9010-100 into evidence.

11:52AM 16 MR. AKINA: No objection.

11:52AM 17 THE COURT: 9010-100 is admitted without objection.

11:52AM 18 You may publish.

11:52AM 19 (Exhibit 9010-100 was received in evidence.)

11:52AM 20 MR. KENNEDY: May we publish?

11:52AM 21 THE COURT: Yes, you may publish.

11:52AM 22 MR. KENNEDY: And, Ms. King, can you move in on the

11:52AM 23 portion that has the white with -- it looks like red lettering

11:52AM 24 from a distance?

11:52AM 25 BY MR. KENNEDY:

11:52AM 1 Q Hard to get it close enough, but is that a placard?

11:52AM 2 A Yes.

11:52AM 3 Q Does it indicate that fumigation is happening?

11:52AM 4 A Yes.

11:52AM 5 Q And that's part of what is to be placed on the -- whether

11:52AM 6 it's a home, a business or whatever, when it's being fumigated,

11:52AM 7 correct?

11:52AM 8 A Yes.

11:52AM 9 Q Okay.

11:52AM 10 MR. KENNEDY: Now, moving to 9010-102. This is a -- a

11:52AM 11 video. If we just pull up the first for Mr. Kimoto.

11:52AM 12 BY MR. KENNEDY:

11:53AM 13 Q Do you recognize what is shown in 9010-102?

11:53AM 14 A It looks like a scale.

11:53AM 15 Q Okay. And in addition to the scale, do you see anything

11:53AM 16 else in the screen?

11:53AM 17 A I see a Vikane cylinder and somebody's hand.

11:53AM 18 MR. KENNEDY: Okay. At this time, Your Honor, I would

11:53AM 19 move 9010-102 into evidence.

11:53AM 20 MR. AKINA: Objection. Lack of foundation.

11:53AM 21 THE COURT: Sustained.

11:53AM 22 BY MR. KENNEDY:

11:53AM 23 Q Are you familiar with how Vikane gas is then used in

11:53AM 24 fumigation?

11:53AM 25 A Can you repeat that question, please?

11:53AM 1 Q Are you familiar with how Vikane gas is used in
11:53AM 2 fumigation?
11:53AM 3 A I'm familiar with what it does, but I wouldn't know how to
11:54AM 4 shoot the gas.
11:54AM 5 Q Okay. So you wouldn't know if this is a video of the gas
11:54AM 6 being shot or not; is that correct?
11:54AM 7 A No.
11:54AM 8 Q Okay. Fair enough. Let's move on then.
11:54AM 9 Now, the other day you talked about the fishing
11:54AM 10 vessel, the Rachel. Do you recall that?
11:54AM 11 A Yes.
11:54AM 12 Q All right. And you mentioned that there were times when
11:54AM 13 cash was paid to the crew, correct?
11:54AM 14 A Correct.
11:54AM 15 Q All right. Were you aware that for every one of those
11:54AM 16 crew members, there was a check that was cut for that crew
11:54AM 17 member?
11:54AM 18 A No, I was not.
11:54AM 19 Q Were you aware that those crew members were not U.S.
11:54AM 20 citizens, so they had to remain on the vessel when it's in port
11:54AM 21 in Honolulu?
11:54AM 22 A Yes, I did know that.
11:54AM 23 Q So since they can't go to a bank, were you aware that a
11:55AM 24 check could be cut to them, cashed, and then cash would be
11:55AM 25 provided to them, but the check would be a record of the

11:55AM 1 amounts paid to them?

11:55AM 2 A No, I was not aware of that.

11:55AM 3 Q And I take it that you're aware that they couldn't walk

11:55AM 4 off the boat or they would be here illegally and arrested,

11:55AM 5 correct?

11:55AM 6 A Yes, I'm aware of that.

11:55AM 7 Q Okay. So to pay them, one way to do that is to cut a

11:55AM 8 check, get it cashed, and provide them with the cash, right?

11:55AM 9 A Correct.

11:55AM 10 Q Particularly if they're from another country and they're

11:55AM 11 out at sea fishing commercially for weeks on end, correct?

11:55AM 12 A Correct.

11:55AM 13 Q Now, the other day you also mentioned that something about

11:55AM 14 that terrible day in November of 2015, the 17th, when Caleb and

11:56AM 15 Mr. Fraser -- Caleb Miske and Mr. Fraser, Jonathan Fraser, were

11:56AM 16 in that accident.

11:56AM 17 A Correct.

11:56AM 18 Q All right. And you talked to the jury about Mr. Miske's

11:56AM 19 reaction.

11:56AM 20 A Correct.

11:56AM 21 Q Now, were you aware that bruising comes after a period of

11:56AM 22 time for someone, it doesn't automatically just come out?

11:56AM 23 A Yes, I'm aware of that.

11:56AM 24 Q Okay. So were you aware that there was a photograph taken

11:56AM 25 which would show bruising moving from the right shoulder across

11:56AM 1 to the left hip on Mr. Miske?

11:56AM 2 MR. AKINA: Objection. Outside the scope.

11:56AM 3 THE COURT: Overruled. Go ahead.

11:56AM 4 THE WITNESS: Yes, I was told by Mike about that.

11:56AM 5 BY MR. KENNEDY:

11:56AM 6 Q And were you aware that in looking at that photograph,

11:57AM 7 doctors indicated it looked like a seatbelt bruising from the

11:57AM 8 right to the left?

11:57AM 9 A I wasn't aware of that. I was -- I mean, I wasn't aware

11:57AM 10 that the doctors had said that. Mike had told me about the

11:57AM 11 bruise and told me what the bruise looked like was.

11:57AM 12 Q Okay. And were you aware that the driver of the truck who

11:57AM 13 made a left turn at 35 miles an hour was the cause of the

11:57AM 14 accident?

11:57AM 15 A No, I was not aware of that.

11:57AM 16 Q Were you aware that Mike sued that individual, Jared

11:57AM 17 Ishiki, and his company for the fact that that individual made

11:57AM 18 a 35-mile-an-hour left turn on a yellow?

11:57AM 19 MR. AKINA: Objection. This is also outside the scope

11:57AM 20 of the witness's testimony.

11:58AM 21 THE COURT: Overruled. Go ahead.

11:58AM 22 THE WITNESS: No -- I mean, I was aware that Mike had

11:58AM 23 lawsuits going on with -- in connection to the accident, but I

11:58AM 24 was -- I was not aware of who the lawsuits were against.

11:58AM 25 BY MR. KENNEDY:

11:58AM 1 Q Were you aware that an expert was retained who indicated
11:58AM 2 that that bruising could only come from the passenger's side
11:58AM 3 seatbelt, right to left?

11:58AM 4 A I was not aware of that.

11:58AM 5 Q Were you aware that Mr. Miske blamed himself because he
11:58AM 6 had taken away the Toyota Tacoma truck that Caleb had prior to
11:58AM 7 that accident?

11:58AM 8 A Yes, Mike -- Mike had told me on an occasion that he does
11:58AM 9 blame himself for taking away the truck from Caleb before the
11:58AM 10 accident.

11:58AM 11 Q And you went to the hospital from time to time, I take it,
11:58AM 12 to see Caleb?

11:58AM 13 A Yeah, I -- I had been there on a few occasions.

11:59AM 14 Q So in the beginning you were aware that there was a
11:59AM 15 question as to whether they needed to amputate his leg or not
11:59AM 16 due to an infection, correct?

11:59AM 17 A Yes.

11:59AM 18 Q And you're aware that Mike had to make that decision,
11:59AM 19 right?

11:59AM 20 A Yes, I -- I was aware of that.

11:59AM 21 Q And that he had one doctor telling him one thing and
11:59AM 22 another doctor telling him another.

11:59AM 23 MR. AKINA: Your Honor, I'm going to object to this
11:59AM 24 line of questioning. It's hearsay. It's calling on the
11:59AM 25 defendant's statements.

11:59AM 1 THE COURT: Overruled. Go ahead.

11:59AM 2 THE WITNESS: Can -- can you repeat the question, sir?

11:59AM 3 BY MR. KENNEDY:

11:59AM 4 Q Were you aware that one doctor, the specialist was telling

11:59AM 5 him to keep the leg, when his regular doctor was saying you

11:59AM 6 should amputate?

11:59AM 7 A I don't remember having that conversation with Mike.

11:59AM 8 Q And do you remember after a couple of months Caleb began

12:00PM 9 to get better, and then the infection moved to his heart?

12:00PM 10 A I do remember that.

12:00PM 11 Q And that he was moments away from dying at that point.

12:00PM 12 A Yeah, I -- I do remember at a point we came -- we came to

12:00PM 13 that.

12:00PM 14 Q And then he lived and he began to go through

12:00PM 15 rehabilitation, and it looked like he was going to be able to

12:00PM 16 leave the hospital and rehabilitate.

12:00PM 17 A Yes, I do remember that.

12:00PM 18 Q And while this was happening, his wife Delia Fabro-Miske

12:00PM 19 had a child Nila, and he was able to hold his child in his

12:00PM 20 arms.

12:00PM 21 A Yes, I did -- I did see a picture of that.

12:00PM 22 Q And were you aware that Mike was making efforts to get a

12:00PM 23 one-story unit available so Caleb could rehab?

12:00PM 24 MR. AKINA: Objection. Hearsay.

12:00PM 25 THE COURT: Overruled. Go ahead.

12:01PM 1 THE WITNESS: I -- I don't remember having that
12:01PM 2 conversation, sir.

12:01PM 3 BY MR. KENNEDY:

12:01PM 4 Q And then the infection moved from the heart to his brain,
12:01PM 5 and he died.

12:01PM 6 A Yes, I -- I do remember that.

12:01PM 7 Q And you know that Mike blames himself for not amputating
12:01PM 8 that leg.

12:01PM 9 A I do not know -- I never had a conversation with Mike
12:01PM 10 about him blaming himself about ampu- -- because he didn't
12:01PM 11 amputate the leg that Caleb passed. The only conversation that
12:01PM 12 we had was about him blaming himself for taking the truck away
12:01PM 13 before the accident.

12:01PM 14 Q Now, you talked about a time where Mike asked you to help
12:02PM 15 Delia if he was ever arrested, correct?

12:02PM 16 A Yes.

12:02PM 17 Q And if arrested, he wanted you to help her run the
12:02PM 18 business.

12:02PM 19 A Correct.

12:02PM 20 Q And he asked you to do this, right?

12:02PM 21 A Yes.

12:02PM 22 Q He didn't think you would be arrested, right?

12:02PM 23 A No, he didn't.

12:02PM 24 Q And he didn't think Delia would be arrested, right?

12:02PM 25 A No, he didn't.

12:02PM 1 Q Because there would be no reason to ask if he thought so,
12:02PM 2 correct?

12:02PM 3 A No.

12:02PM 4 Q Now, on the -- last week you mentioned that you saw press
12:02PM 5 regarding Mr. Fraser's disappearance on Saturday, July 30th,
12:02PM 6 2016. Do you recall that?

12:02PM 7 A Yes.

12:02PM 8 Q Are you aware there was no press on that Saturday?

12:02PM 9 A No, I'm not aware.

12:03PM 10 Q That his disappearance had not even been reported?

12:03PM 11 A No, sir. I'm not aware of that.

12:03PM 12 Q Now, sir, you've entered into a plea agreement here,
12:03PM 13 correct?

12:03PM 14 A Correct.

12:03PM 15 Q And originally one of the charges against you was Count 1,
12:03PM 16 a RICO conspiracy, correct?

12:03PM 17 A Correct.

12:03PM 18 Q And in that RICO conspiracy, you were charged with a --
12:03PM 19 what's known as a special sentencing factor. Do you recall
12:03PM 20 that?

12:03PM 21 A Could you -- could you repeat the question, please?

12:03PM 22 Q Yes. In the charge you yourself personally were charged
12:03PM 23 with something called a special sentencing factor in violation
12:04PM 24 of the drug statute, Title 21, United States Code, Sections
12:04PM 25 846, 841(a)(1) and 841(b)(1). Do you recall that as part of

12:04PM 1 the RICO charge against you?

12:04PM 2 A Yes.

12:04PM 3 Q That charge carried a statutory maximum of life in prison.

12:04PM 4 A Yes.

12:04PM 5 Q The RICO conspiracy is to be dismissed after sentencing,

12:04PM 6 but not yet, correct?

12:04PM 7 A Correct.

12:04PM 8 Q Because your plea agreement means that you have to testify

12:04PM 9 for them.

12:04PM 10 MR. AKINA: Objection as to "testify for them."

12:04PM 11 THE COURT: Sustained.

12:04PM 12 BY MR. KENNEDY:

12:04PM 13 Q Charge Count 16 was conspiracy to distribute and possess

12:04PM 14 with the intent to distribute controlled substances. Do you

12:05PM 15 recall that charge?

12:05PM 16 A Yes.

12:05PM 17 Q And once again, that was in violation of title 21, United

12:05PM 18 States Code, Sections 846, 841(b)(1)(A), and 841(b)(1)(C) and

12:05PM 19 841(b)(1)(D). Do you recall that charge?

12:05PM 20 A Yes.

12:05PM 21 Q The (b)(1)(A) portion makes that charge a statutory

12:05PM 22 maximum of life in prison, correct?

12:05PM 23 A Correct.

12:05PM 24 Q That too will be dismissed but only after sentencing,

12:05PM 25 correct?

12:05PM 1 A Correct.

12:05PM 2 Q And we talked last week about how the witness tampering
12:05PM 3 charges have already been dismissed, right?

12:05PM 4 A Correct.

12:05PM 5 Q But without prejudice, which means they can be brought
12:05PM 6 back by the government at any time.

12:05PM 7 A Correct.

12:05PM 8 Q In your plea agreement, you agreed to certain facts.
12:06PM 9 Fair?

12:06PM 10 A Fair.

12:06PM 11 Q Last week you told this jury that you only learned about
12:06PM 12 the kidnapping that was done by Mr. Miller and Mr. Ortiz on
12:06PM 13 October 17, 2017, after it had already happened.

12:06PM 14 A Correct.

12:06PM 15 Q In your plea agreement you agreed that beginning no later
12:06PM 16 than May 2017, you agreed to willfully and unlawfully seize,
12:06PM 17 confine, kidnap, abduct, and carry away for money, ransom or
12:06PM 18 reward, Victim 3, Robert Lee, correct?

12:06PM 19 A Correct.

12:06PM 20 Q So you told this jury you didn't know about it until
12:07PM 21 October 17, 2017, but in this courtroom when you entered your
12:07PM 22 plea, you told them that you were in the conspiracy no later
12:07PM 23 than May of 2017, correct?

12:07PM 24 MR. AKINA: Objection, Your Honor. This
12:07PM 25 mischaracterizes the plea agreement.

12:07PM 1 THE COURT: Sustained.

12:07PM 2 MR. AKINA: Move to strike counsel's comments, Your

12:07PM 3 Honor.

12:07PM 4 THE COURT: Counsel's comments I'll remind the jury

12:07PM 5 are not evidence of anything, including counsel's questions.

12:07PM 6 BY MR. KENNEDY:

12:08PM 7 Q Sir, there was no trip to the gym, was there?

12:08PM 8 A That was -- that's false. There was a trip to the gym.

12:08PM 9 Q There was no trip back to the office, was there?

12:08PM 10 A False again.

12:08PM 11 Q And there was no erase board?

12:08PM 12 A That is also false.

12:08PM 13 Q And Mr. Miske didn't know a thing about this kidnapping.

12:08PM 14 It was you and Miller, correct?

12:08PM 15 A Not correct. Mr. Miske did know about the kidnapping.

12:08PM 16 Q And you're looking for a better sentence by testifying

12:08PM 17 here today that way.

12:08PM 18 A I'm hoping to get a better sentence by testifying

12:08PM 19 truthfully, sir.

12:08PM 20 MR. KENNEDY: Nothing further.

12:08PM 21 THE COURT: All right. Before -- Mr. Akina, before

12:08PM 22 redirect, why don't we go ahead and take our second break of

12:08PM 23 the day. We're about an hour and a half into this latest

12:09PM 24 session.

12:09PM 25 So I'll remind our jurors as we go to break to

12:09PM 1 refrain, please, from discussing the substance of this case
12:09PM 2 with anyone, including each another; to refrain from accessing
12:09PM 3 any media or other accounts of this case that may be out there;
12:09PM 4 and then finally, please do not conduct any independent
12:09PM 5 investigation into the facts, circumstances or persons
12:09PM 6 involved.

12:09PM 7 It's about ten after now, so let's try to get started
12:09PM 8 right around 12:30.

12:09PM 9 (Proceedings were recessed at 12:09 p.m. to 12:33
12:33PM 10 p.m.)

12:33PM 11 THE COURT: All right. Back from our second break.
12:33PM 12 The record should reflect the return of all 17 jurors. The
12:33PM 13 witness Mr. Kimoto is back on the stand. The presence of
12:33PM 14 counsel and parties.

12:33PM 15 Mr. Akina, you may begin with redirect when you're
12:33PM 16 ready.

12:33PM 17 MR. AKINA: Thank you, Your Honor.

12:33PM 18 REDIRECT EXAMINATION

12:33PM 19 BY MR. AKINA:

12:33PM 20 Q Mr. Kimoto, I'm going to ask you some questions about your
12:33PM 21 plea agreement, okay?

12:33PM 22 A Yes.

12:33PM 23 Q As part of your plea agreement, are you testifying here at
12:33PM 24 this trial?

12:33PM 25 A Yes.

12:33PM 1 Q And what is your understanding pursuant to the plea
12:33PM 2 agreement of your obligation when you testify at this trial?
12:33PM 3 A My understanding is that I need to tell the truth about --
12:33PM 4 I need to tell the truth with every question that is asked of
12:33PM 5 me.
12:33PM 6 Q And what happens if you don't tell the truth to your plea
12:33PM 7 agreement?
12:33PM 8 A If I do not tell the truth, and you find that I've lied
12:34PM 9 here on the stand, that I would be in a worse off position than
12:34PM 10 I am -- that I would be when we first started this.
12:34PM 11 Q You understand you could open yourself up to perjury
12:34PM 12 charges, right?
12:34PM 13 A Yes.
12:34PM 14 Q And the plea agreement that includes the dismissal of
12:34PM 15 certain charges after your sentencing, what could happen to
12:34PM 16 that if you lie to -- lie here at this trial?
12:34PM 17 A You guys could charge me with that.
12:34PM 18 Q It could come back, right?
12:34PM 19 A Correct.
12:34PM 20 Q Or it wouldn't be dismissed at all.
12:34PM 21 A Yes.
12:34PM 22 Q Now, some of the charges that may be dismissed that
12:34PM 23 defense counsel asked you about, you remember acknowledging
12:34PM 24 that the statutory maximum was life in prison for those?
12:34PM 25 A I remember it being said to me by my attorney, but not in

12:34PM 1 full detail.

12:34PM 2 Q And the charge that you did plead guilty to, the
12:34PM 3 conspiracy to commit kidnapping, do you understand that the
12:34PM 4 maximum statutory penalty for that is also life in prison?

12:35PM 5 A Yes, I do recognize that.

12:35PM 6 Q And that's the charge that is still -- that you could be
12:35PM 7 sentenced on -- that you will be sentenced on, correct?

12:35PM 8 A Correct.

12:35PM 9 Q Now, the kidnapping that you testified about, as part of
12:35PM 10 your plea agreement, did you acknowledge that you were part of
12:35PM 11 that conspiracy starting from May of 2017?

12:35PM 12 A Yes.

12:35PM 13 Q And what -- what event does that line up with?

12:35PM 14 A That event lines up with when I met Sunnie for lunch that
12:35PM 15 day at the Kaka'ako restaurant.

12:35PM 16 Q And at that lunch, she -- that's when the initial request
12:35PM 17 was made to help collect the debt?

12:35PM 18 A Yes.

12:35PM 19 Q And at that point did -- was a kidnapping discussed?

12:36PM 20 A At that point, a kidnapping was not discussed.

12:36PM 21 Q And after your next meeting with Ms. Kim where she gives
12:36PM 22 you the Post-it note, and you gave that Post-it note -- made
12:36PM 23 sure that the defendant got that Post-it note, at that point
12:36PM 24 had you discussed a kidnapping with anybody?

12:36PM 25 A No. I did not discuss that kidnapping.

12:36PM 1 Q At that point, and then afterwards several months later in
12:36PM 2 October, when the defendant brought you back to Kama'aina
12:36PM 3 Termite and told you that Wayne Miller had the accountant, had
12:36PM 4 you heard anything about a kidnapping before that point in
12:36PM 5 time?

12:36PM 6 A No, I did not.

12:36PM 7 Q So when was the first time that you realized that a
12:36PM 8 kidnapping was going to take place or had taken place?

12:36PM 9 A On October 17th.

12:36PM 10 Q And who did you learn about the kidnapping from first?

12:36PM 11 A The defendant, Mike.

12:36PM 12 Q Not Wayne Miller?

12:36PM 13 A Not Wayne.

12:36PM 14 Q And so even though you didn't realize that a kidnapping
12:37PM 15 would take place, you still pled guilty to being a part of that
12:37PM 16 conspiracy all the way back in -- starting from the summer of
12:37PM 17 2017?

12:37PM 18 A Yes.

12:37PM 19 Q Is that because you took responsibility for your actions?

12:37PM 20 A Because, yes, I did take responsibility for my action.
12:37PM 21 That's the only way that I could move on from this.

12:37PM 22 Q And you acknowledge that that did play some role in the
12:37PM 23 kidnapping, right?

12:37PM 24 A Yes.

12:37PM 25 Q And I want to clear up a couple of things. With the

12:37PM 1 fumigations that you did for Ms. Kim, how many total were
12:37PM 2 there?

12:37PM 3 A There was two fumigations.

12:37PM 4 Q And the first fumigation, when was that?

12:37PM 5 A That was in 2017.

12:37PM 6 Q And when did that take place in relation to the kidnapping
12:37PM 7 events?

12:37PM 8 A That was before the kidnapping.

12:38PM 9 Q And I think you had testified on direct that that was
12:38PM 10 when -- at around time when Ms. Kim first approached you to ask
12:38PM 11 for help with the debt?

12:38PM 12 A Yes.

12:38PM 13 Q Was there a prior fumigation before that?

12:38PM 14 A No, there was not a prior fumigation before that.

12:38PM 15 Q So -- so the second fumigation, when did that take place
12:38PM 16 with reference to the kidnapping?

12:38PM 17 A That happened after the kidnapping.

12:38PM 18 Q Wayne Miller, how do you know Wayne Miller?

12:38PM 19 A I knew Wayne Miller through Mike.

12:38PM 20 Q And back in 2017, could you describe the frequency with
12:38PM 21 which you would interact with Wayne Miller?

12:38PM 22 A I really didn't see Wayne too often. He would -- he would
12:38PM 23 contact me to -- if he needed to get in contact with Mike and
12:39PM 24 Mike wasn't available or answering his texts or calls, then he
12:39PM 25 would ask me -- he would -- he would contact me through text or

12:39PM 1 calling me to see if I knew where Mike was.

12:39PM 2 Q And so for the kidnapping, do you know what vehicle, if
12:39PM 3 any, Wayne Miller used to carry out the kidnapping?

12:39PM 4 A I do not know what vehicle Wayne used to carry out the
12:39PM 5 kidnapping. I just know that I seen him -- when I met with
12:39PM 6 him, I seen him in a light-colored sedan.

12:39PM 7 Q But you have no personal knowledge of which exact vehicle
12:39PM 8 was actually used by Wayne Miller?

12:39PM 9 A No, I do not.

12:39PM 10 Q You were asked a question by defense counsel that the
12:39PM 11 first time you mentioned Ms. Kim's request to kill the
12:40PM 12 accountant was only after your 2022 arrest, correct?

12:40PM 13 A I'm sorry, I missed --

12:40PM 14 Q Do you recall being -- do you remember being asked that
12:40PM 15 question by defense counsel?

12:40PM 16 A Yes, I do.

12:40PM 17 Q And the time in 2022 when you were arrested for the
12:40PM 18 witness tampering charge?

12:40PM 19 A Yes.

12:40PM 20 Q At that point in time, prior to your arrest, had you told
12:40PM 21 the government anything?

12:40PM 22 A No.

12:40PM 23 Q Had you entered into any type of plea agreement with the
12:40PM 24 government at that point?

12:40PM 25 A No.

12:40PM 1 Q Had you even come in for a proffer with the government up
12:40PM 2 to that point?

12:40PM 3 A No.

12:40PM 4 Q And what's your understanding of a proffer?

12:40PM 5 A A proffer is when I come in and speak about, I guess, what
12:40PM 6 I did.

12:40PM 7 Q With the government.

12:40PM 8 A With the government.

12:40PM 9 Q And there are agents there as well?

12:40PM 10 A There are agents, yes.

12:40PM 11 Q And so it wasn't until 2023 that you decided to enter into
12:41PM 12 a plea agreement; is that correct?

12:41PM 13 A Yes.

12:41PM 14 Q And as part of those discussions, did you proffer with the
12:41PM 15 government and agents?

12:41PM 16 A Yes.

12:41PM 17 Q And on the first -- do you remember meeting the first time
12:41PM 18 on May 24th, 2023?

12:41PM 19 A It -- it was around that time.

12:41PM 20 Q And the first meeting that you had, is that when you
12:41PM 21 discussed and explained your involvement in the kidnapping?

12:41PM 22 A I believe we did go over what had -- what had happened.

12:41PM 23 Q And at that first meeting did you also explain or reveal
12:41PM 24 to the government and agents that Ms. Kim had made the request
12:41PM 25 about killing the accountant?

12:41PM 1 A Yes.

12:41PM 2 Q And at that first meeting did you explain to the

12:41PM 3 government and agents about the defendant's involvement and

12:41PM 4 Wayne Miller's involvement?

12:41PM 5 A Yes.

12:41PM 6 Q Was that consistent with how you testified at this trial?

12:41PM 7 A Yes.

12:42PM 8 MR. AKINA: Could we show the witness Exhibit 5-37,

12:42PM 9 which is in evidence, page 3, please?

12:42PM 10 THE COURT: Yes, go ahead.

12:42PM 11 MR. AKINA: And permission to publish?

12:42PM 12 THE COURT: Yes.

12:42PM 13 BY MR. AKINA:

12:42PM 14 Q You were asked about some text messages on cross-

12:42PM 15 examination. If we could focus in on messages 13, 14 and 15,

12:42PM 16 please.

12:42PM 17 Looking at message 15 where -- where you text Wayne

12:42PM 18 Miller: "I'm doing an estimate right now. Braddah said hold

12:42PM 19 on, and I'm going to meet him at shop right after this and get

12:42PM 20 back to you."

12:42PM 21 Do you see that?

12:43PM 22 A Yes.

12:43PM 23 Q And when the defense counsel asked you about "braddah,"

12:43PM 24 who that could mean to you, you were about to explain

12:43PM 25 something. Do you recall that?

12:43PM 1 A Yes.

12:43PM 2 Q Can you explain to the jury what you were going to say?

12:43PM 3 A I was going to say that that's not what Mike's nickname

12:43PM 4 was, braddah. So that's why Wayne is probably confused and

12:43PM 5 asking me who when I say "braddah," because we never would use

12:43PM 6 names on texts or phone calls.

12:43PM 7 Q And why wouldn't you use names on texts and phone calls?

12:43PM 8 A In case the government or law enforcement was listening in

12:43PM 9 or tapping and viewing our texts, we didn't want to put

12:43PM 10 anybody -- anybody's name in these texts.

12:43PM 11 Q So up to October 2017, what was the defendant's -- I guess

12:43PM 12 what name was he most commonly referred to by as a nickname?

12:44PM 13 A I would refer to Mike as "Bro," or we would -- I would

12:44PM 14 just use initials like MM.

12:44PM 15 Q Okay. And so here you use "braddah" instead. Why?

12:44PM 16 A Because I was running this -- I was running this text

12:44PM 17 fast, and I just had said "braddah," thinking that Wayne would

12:44PM 18 understand who I was talking about because referring -- it goes

12:44PM 19 back to "Braddah said hold on, and I'm going to meet him at the

12:44PM 20 shop." That's the only person that that could -- that could be

12:44PM 21 in relation to.

12:44PM 22 Q And you mentioned that you didn't put names in text

12:44PM 23 messages. Is that why you put "Bro" after Wayne Miller asked

12:44PM 24 you who you were referring to?

12:44PM 25 A Yes.

12:45PM 1 MR. AKINA: Now, we can take this exhibit down.

12:45PM 2 BY MR. AKINA:

12:45PM 3 Q There was a phone number ending in 2822. Do you remember
12:45PM 4 that phone number?

12:45PM 5 A Yes.

12:45PM 6 Q And that was the phone that you were using during the time
12:45PM 7 that you worked for the defendant?

12:45PM 8 A Yes.

12:45PM 9 Q And was this that burner phone that you were referencing
12:45PM 10 that the defendant had asked you to go and get?

12:45PM 11 A Yes.

12:45PM 12 Q And at the time when you got that phone, how many did you
12:45PM 13 purchase in total?

12:45PM 14 A Sorry. Could you repeat?

12:45PM 15 Q How many phones did you purchase in total at that time?

12:45PM 16 A I purchased two phones.

12:45PM 17 Q And what were they for?

12:45PM 18 A Those two phones were to be used for me and Mike to
12:45PM 19 communicate through.

12:45PM 20 Q And so how did this phone number ending in 2822 go from a
12:45PM 21 burner phone dedicated to communications with the defendant to
12:45PM 22 now being a phone that was being used, you know, in other
12:46PM 23 aspects of business?

12:46PM 24 A From what I remember, I believe that I used the number
12:46PM 25 when texting two of Mike's phones.

12:46PM 1 Q When you say "the number," which number are you saying?

12:46PM 2 A I used the 2822 to text two of Mike's phones. The one --

12:46PM 3 the one that I purchased with my -- with the 2822 number and

12:46PM 4 another number associated with Mike.

12:46PM 5 Q And so after you texted the defendant at another number

12:46PM 6 that wasn't that burner that you purchased for him, is that

12:46PM 7 when the use for 2822 changed?

12:46PM 8 A Yes, that's when it -- that's not exactly when it changed,

12:46PM 9 but that's when it changed where we couldn't use that phone --

12:46PM 10 both those phones to communicate with, because now the phones

12:46PM 11 were dirty now, we call it, because it was -- I texted the

12:46PM 12 number that law enforcement was probably -- was most likely

12:46PM 13 viewing our texts or reviewing our phone calls on. And now I

12:47PM 14 introduced two new numbers into -- to get their -- I mean to

12:47PM 15 get their attention now.

12:47PM 16 Q Do you remember being shown some videos involving Wes

12:47PM 17 Otani on cross-examination?

12:47PM 18 A Yes.

12:47PM 19 Q And he was providing trainings to fumigation staff?

12:47PM 20 A Yes.

12:47PM 21 Q Do you know why that particular training was offered by

12:47PM 22 the defendant?

12:47PM 23 A I -- I don't -- I don't know why, sir.

12:47PM 24 MR. AKINA: Could we show the witness Exhibit 1-843,

12:47PM 25 which is not in evidence, and going to page 8 of that.

12:47PM 1 BY MR. AKINA:

12:48PM 2 Q Do you recognize this photo?

12:48PM 3 A Yes.

12:48PM 4 Q What does this photo show?

12:48PM 5 A This photo shows -- this photo shows employees filling out
12:48PM 6 best of -- Hawaii's Best of.

12:48PM 7 Q Which employees?

12:48PM 8 A In this picture it shows Kama'aina employees.

12:48PM 9 Q And are you familiar with the practice of employees
12:48PM 10 filling out Hawaii's Best ballots?

12:48PM 11 A Yes, I participated in this.

12:48PM 12 Q And does this picture show Kama'aina employees filling out
12:48PM 13 Hawaii Best ballots?

12:49PM 14 A Correct.

12:49PM 15 MR. AKINA: Your Honor, this particular page is part
12:49PM 16 of a greater exhibit. I have it separately marked as a
12:49PM 17 separate one, which we can submit as Exhibit 1-843-A, and I can
12:49PM 18 hand that up to the Court.

12:49PM 19 THE COURT: Are you offering it?

12:49PM 20 MR. AKINA: Yes, I'm offering it into evidence at this
12:49PM 21 time.

12:49PM 22 THE COURT: Any objection?

12:49PM 23 MR. KENNEDY: No objection.

12:49PM 24 THE COURT: Without objection, Exhibit 1-843 Alpha is
12:49PM 25 admitted.

12:49PM 1 (Exhibit 1-843-A was received in evidence.)

12:49PM 2 MR. AKINA: For the purposes of today, Your Honor,
12:49PM 3 could we just display this page of this exhibit for the jury?

12:49PM 4 THE COURT: Yes.

12:49PM 5 MR. AKINA: Thank you.

12:49PM 6 Now, if we could zoom in on the bottom half of the
12:49PM 7 picture.

12:49PM 8 BY MR. AKINA:

12:49PM 9 Q Okay. You see that red shirt, the long-sleeved red shirt?

12:49PM 10 A Yes.

12:49PM 11 Q What type of shirt is that?

12:49PM 12 A That's an authorized technician Kama'aina shirt.

12:50PM 13 Q And do you see these stacks of papers in front of this
12:50PM 14 individual, what is that?

12:50PM 15 A The stacks of papers are newspaper -- newspaper ballots
12:50PM 16 for the Hawaii's Best of 2018.

12:50PM 17 Q And do you see stacks of numerous ballots in front of the
12:50PM 18 employees?

12:50PM 19 A Yes.

12:50PM 20 Q And so you mentioned that you had participated in doing
12:50PM 21 this. So what is -- what is your understanding of how Hawaii's
12:50PM 22 Best awards are -- are awarded?

12:50PM 23 A It's a vote by the public.

12:50PM 24 Q And what relation, if any, do these type of ballots have
12:50PM 25 to that determination, that vote?

12:50PM 1 A The more votes you get, I guess, that's the how the best
12:50PM 2 of is awarded.

12:50PM 3 Q And can you explain how you participated in that?

12:50PM 4 A I participated by filling out numerous of these ballot
12:51PM 5 forms, and not turning it in, but we -- I don't know who would
12:51PM 6 turn it in, but we would just leave it -- we would just fill it
12:51PM 7 out and leave it -- leave it for somebody to turn in.

12:51PM 8 Q And why did you do that?

12:51PM 9 A Because I was asked by the defendant.

12:51PM 10 MR. AKINA: If we could zoom out of this.

12:51PM 11 BY MR. AKINA:

12:51PM 12 Q What room -- do you know what room this is taking place
12:51PM 13 in?

12:51PM 14 A This is the Kama'aina board room.

12:51PM 15 Q Is this that same board room where you were giving that
12:51PM 16 training in that video that you were shown on cross?

12:51PM 17 A Yes.

12:51PM 18 Q Did this happen on just one year, during one year?

12:51PM 19 A No, this happened numerous years.

12:51PM 20 Q Of the years that you worked for the defendant from 2015
12:51PM 21 to 2020, approximately how many of those years to your
12:52PM 22 knowledge did it take place?

12:52PM 23 A I would say at least -- at least two.

12:52PM 24 MR. AKINA: We can take this exhibit down.

12:52PM 25 BY MR. AKINA:

12:52PM 1 Q Do you recall being shown several manager threads on
12:52PM 2 cross-examination?

12:52PM 3 A Yes.

12:52PM 4 Q And you were asked some questions about the individuals
12:52PM 5 who were on those threads?

12:52PM 6 A Yes.

12:52PM 7 Q Did you see Michael Masutani's name on those -- any of
12:52PM 8 those threads?

12:52PM 9 A I don't -- I don't think I saw Michael Masutani's name on
12:53PM 10 those threads.

12:53PM 11 Q And did you see Devin Kimoto's name on any of those
12:53PM 12 threads?

12:53PM 13 A I did not see my brother's name on those threads.

12:53PM 14 MR. AKINA: Could we show Exhibit 5000-129?

12:53PM 15 And I would ask defense counsel if it's readily
12:53PM 16 available?

12:53PM 17 This is already in evidence.

12:53PM 18 THE COURT: Go ahead.

12:54PM 19 BY MR. AKINA:

12:54PM 20 Q You were asked questions on cross-examination about the
12:54PM 21 Oahu yacht club fumigation. Do you remember that?

12:54PM 22 A I think this is the Waikiki one.

12:54PM 23 Q My mistake, sorry. Waikiki Yacht Club.

12:54PM 24 And then can you explain to the jury how you worked
12:54PM 25 with another company to ensure the contract?

12:54PM 1 A So I got called out to this particular property for an
12:54PM 2 estimate. I went through the estimate -- I mean I went and did
12:54PM 3 the estimate before submitting my estimated cost to fumigate
12:54PM 4 this property.

12:54PM 5 I found out that somebody else from Kama'aina -- I
12:54PM 6 mean I found out somebody from Kama'aina went as a Kama'aina
12:54PM 7 salesperson, and I went as an O'ahu sales inspector. We both
12:55PM 8 agreed that one of us would go higher and a lot higher for the
12:55PM 9 pricing for this job, and the other one would come in at a
12:55PM 10 reasonable price.

12:55PM 11 This -- this particular fumigation isn't -- it isn't
12:55PM 12 an easy one. It's considered a difficult fumigation. So by --
12:55PM 13 by myself and the Kama'aina salesperson going, we -- what we
12:55PM 14 would do is we would split the sale, so we would still both
12:55PM 15 benefit. But I -- I agreed to be the one to go higher on this
12:55PM 16 sale because I didn't want the headache of trying to manage the
12:55PM 17 expectations from the Waikiki Yacht harbor on this tent
12:55PM 18 fumigation.

12:55PM 19 Q And was that the only time that you did something like
12:56PM 20 that while working at O'ahu Termite?

12:56PM 21 A That -- no, it wasn't the only time. I did it on quite a
12:56PM 22 few occasions where we would -- we would have to report at the
12:56PM 23 end of our day what estimates we did and what we sold. We
12:56PM 24 would have to report that on -- in the -- I mean in the sales,
12:56PM 25 either the Slack or Signal. Everybody was required to report

12:56PM 1 how much they sold that day and what estimates they did.

12:56PM 2 So that's how we would know where each of us went to

12:56PM 3 so we could see if we -- so we could see if we went to the same

12:56PM 4 customer's house. And if we did, then we would work together

12:56PM 5 in securing that sale and we would split -- would split that

12:56PM 6 sale.

12:56PM 7 MR. AKINA: Thank you. No further questions.

12:57PM 8 THE COURT: All right. Mr. Kimoto, you may step down

12:57PM 9 with the marshal's assistance.

12:57PM 10 MR. KENNEDY: Your Honor, can I have some follow-up?

12:57PM 11 THE COURT: No.

12:57PM 12 MR. KENNEDY: Just a couple of questions.

12:57PM 13 THE COURT: Your next witness.

12:57PM 14 MR. INCIONG: Wayne Miller, Your Honor.

12:58PM 15 Did you want him brought in right now, Your Honor?

12:58PM 16 THE COURT: It's up to you.

12:58PM 17 MR. INCIONG: I think --

12:58PM 18 THE COURT: You want to take a break?

12:58PM 19 MR. INCIONG: -- if we could take the jury out just
12:58PM 20 briefly.

12:58PM 21 THE COURT: All right. Why don't we go ahead and do
12:58PM 22 that then.

12:58PM 23 It's going to take a little bit of time to switch

12:58PM 24 witnesses. So we'll excuse the jury. And once we have

12:58PM 25 Mr. Miller situated, we'll call you right back in. It

12:58PM 1 shouldn't be more than just a few minutes.

01:10PM 2 (A recess was taken from 12:58 p.m. to 1:10 p.m.)

01:10PM 3 THE COURT: All right. Back from our brief break.

01:10PM 4 Has the witness -- the witness needs to be sworn.

01:10PM 5 THE CLERK: Please raise your right hand.

01:10PM 6 WAYNE MILLER,

01:10PM 7 called as a witness, having been first duly sworn, was examined

01:10PM 8 and testified as follows:

01:10PM 9 THE CLERK: Please state your full name, spelling your

01:10PM 10 last name for the record.

01:10PM 11 THE WITNESS: Wayne Miller. Last name M-I-L-L-E-R.

01:10PM 12 THE COURT: Mr. Inciong.

01:10PM 13 MR. INCIONG: Thank you, Your Honor.

01:10PM 14 DIRECT EXAMINATION

01:10PM 15 BY MR. INCIONG:

01:10PM 16 Q Good afternoon, Mr. Miller. How old are you, sir?

01:10PM 17 A Forty.

01:10PM 18 Q It looks like you are currently incarcerated; is that
01:10PM 19 correct?

01:10PM 20 A Correct.

01:10PM 21 Q Who are you in the custody of?

01:10PM 22 A I'm in the custody of United States Marshals.

01:10PM 23 Q How long have you been in custody?

01:10PM 24 A Almost five years.

01:10PM 25 Q Why are you in custody?

01:10PM 1 A I pled guilty to this charge.

01:11PM 2 Q What charge are you referring to?

01:11PM 3 A Racketeering conspiracy.

01:11PM 4 Q When did you plead guilty to that charge?

01:11PM 5 A December 2020.

01:11PM 6 Q Is that a felony charge you pled guilty to?

01:11PM 7 A Yes.

01:11PM 8 Q Were you represented by counsel at the time that you

01:11PM 9 entered that guilty plea?

01:11PM 10 A Yes.

01:11PM 11 Q Who is your attorney?

01:11PM 12 A Max Mizono.

01:11PM 13 Q Is Mr. Mizono an attorney here in Honolulu?

01:11PM 14 A Yes.

01:11PM 15 Q Has Mr. Mizono represented you throughout your -- the

01:11PM 16 proceedings?

01:11PM 17 A Yes.

01:11PM 18 Q Including up to today?

01:11PM 19 A Yes.

01:11PM 20 Q Did Mr. Mizono advise you as to the possible or applicable

01:11PM 21 guideline range that you would be facing for pleading guilty to

01:11PM 22 racketeering conspiracy?

01:11PM 23 A Yes.

01:11PM 24 Q What is your understanding of what you could be facing for

01:11PM 25 pleading guilty to that charge?

01:11PM 1 A Life.

01:11PM 2 Q Pursuant to your plea agreement, are you facing a specific
01:12PM 3 maximum penalty?

01:12PM 4 A Yes.

01:12PM 5 Q What is that maximum?

01:12PM 6 A Twenty years.

01:12PM 7 Q So that's less than the applicable guideline range you
01:12PM 8 talked about.

01:12PM 9 A Yes.

01:12PM 10 Q Did you pleading guilty to racketeering conspiracy
01:12PM 11 pursuant to what's called an information?

01:12PM 12 A Yes.

01:12PM 13 Q Did you waive your right to be indicted and instead pled
01:12PM 14 guilty to that information?

01:12PM 15 A Yes.

01:12PM 16 Q What is your understanding of the general terms of your
01:12PM 17 plea agreement that you entered into with the government?

01:12PM 18 A I pled guilty to -- to a racketeering conspiracy. I
01:12PM 19 agreed that I committed those crimes under racketeering law.

01:12PM 20 Q Okay. Were there any charges that were dismissed or any
01:12PM 21 other promises made to you as part of that plea agreement?

01:12PM 22 A Yes.

01:12PM 23 Q Could you describe what those are?

01:12PM 24 A Drugs and firearms and kidnapping.

01:12PM 25 Q Okay. Did the plea agreement also cap your sentence at

01:13PM 1 20 years, as I think you testified to a moment ago?

01:13PM 2 A Yes.

01:13PM 3 Q Under the plea agreement do you have the right to request
01:13PM 4 a sentence even below 20 years?

01:13PM 5 A Yes.

01:13PM 6 Q Are you familiar with the term "acceptance of
01:13PM 7 responsibility"?

01:13PM 8 A Yes.

01:13PM 9 Q Did the plea agreement award you any sort of benefit for
01:13PM 10 acceptance of responsibility?

01:13PM 11 A They -- they went down three points on me.

01:13PM 12 Q And that's in the calculation of your guideline range?

01:13PM 13 A Yes.

01:13PM 14 Q Did your plea agreement include a cooperation agreement?

01:13PM 15 A Yes.

01:13PM 16 Q Could you explain basically the general terms of your
01:13PM 17 cooperation agreement.

01:13PM 18 A Testify truthfully, cooperate with law enforcement, and
01:13PM 19 tell the truth.

01:13PM 20 Q Are you testifying today freely and voluntarily?

01:13PM 21 A Yes.

01:13PM 22 Q Has anyone threatened or coerced you in any way in order
01:13PM 23 to get you to testify today?

01:13PM 24 A No.

01:13PM 25 Q What are you hoping to gain from testifying in this

01:14PM 1 matter?

01:14PM 2 A A lower sentence.

01:14PM 3 Q What will determine if you do in fact receive a lower
01:14PM 4 sentence?

01:14PM 5 Is there a process that will -- that determines
01:14PM 6 whether or not that happens in the end?

01:14PM 7 A Yes.

01:14PM 8 Q Okay. Do you know what that -- those steps are?

01:14PM 9 A I forgot.

01:14PM 10 Q Okay. We'll come back to it in a minute.

01:14PM 11 Do you recall who makes the decision -- final decision
01:14PM 12 as to whether or not you do in fact receive a lower sentence?

01:14PM 13 A Yes.

01:14PM 14 Q Who is that?

01:14PM 15 A The judge.

01:14PM 16 Q Have you been promised or guaranteed a reduced sentence by
01:14PM 17 anyone from the government in this case?

01:14PM 18 A No.

01:14PM 19 Q Have you been promised anything in return for your
01:14PM 20 testimony in this case?

01:14PM 21 A No.

01:14PM 22 Q Did you previously testify before what's called a grand
01:14PM 23 jury in this matter, sir?

01:14PM 24 A Yes.

01:14PM 25 Q Do you recall when you testified before the grand jury?

01:15PM 1 A 2019, about mid-2019.

01:15PM 2 Q Okay. Do you recall were you under oath during that
01:15PM 3 testimony?

01:15PM 4 A Yes.

01:15PM 5 Q Do you recall if you were also under penalty of perjury if
01:15PM 6 you testified dishonestly during that proceeding?

01:15PM 7 A Yes.

01:15PM 8 Q Were you represented at that time by your counsel you
01:15PM 9 referred to, Mr. Mizono?

01:15PM 10 A Yes.

01:15PM 11 Q Prior to coming to court today, did you have access to the
01:15PM 12 grand jury transcript of your testimony from --

01:15PM 13 A Yes.

01:15PM 14 Q And have you reviewed that particular grand jury
01:15PM 15 transcript?

01:15PM 16 A Yes.

01:15PM 17 Q Does that transcript accurately reflect your statements to
01:15PM 18 the grand jury on that day in the summer of 2019?

01:15PM 19 A Yes.

01:15PM 20 Q So let me go back and ask you a couple of questions about
01:15PM 21 your plea agreement. Now, you mentioned that you pled guilty
01:15PM 22 to racketeering conspiracy, correct?

01:15PM 23 A Yes.

01:15PM 24 Q Did you also admit to being a member of the Miske
01:15PM 25 Enterprise?

01:15PM 1 A Yes.

01:15PM 2 Q Were there other members of the Miske Enterprise that you
01:16PM 3 agreed to commit the racketeering offenses you referenced
01:16PM 4 earlier?

01:16PM 5 A Yes.

01:16PM 6 Q Who are some of those people?

01:16PM 7 A Myself, Mike Miske, Jake Smith, Harry Kauhi, Lance
01:16PM 8 Bermudez.

01:16PM 9 Q Okay. In your view, was there a leader of this
01:16PM 10 enterprise?

01:16PM 11 A Yes.

01:16PM 12 Q Who was that?

01:16PM 13 A Mike Miske.

01:16PM 14 Q Is there any doubt from your knowledge or your experience
01:16PM 15 as to who the leader of the Miske Enterprise was?

01:16PM 16 A No.

01:16PM 17 Q Do you see the individual you identified as the leader of
01:16PM 18 the Miske Enterprise in court today?

01:16PM 19 A Yes.

01:16PM 20 Q Could you identify where that person is seated and what
01:16PM 21 they're wearing for the record, please.

01:16PM 22 A He is over there, gray long sleeve, collared shirt on.

01:16PM 23 MR. INCIONG: Your Honor, may the record reflect that
01:16PM 24 Mr. Miller has identified Michael Miske?

01:16PM 25 THE COURT: Yes, the record should reflect the

01:17PM 1 witness, Mr. Miller's identification of the defendant

01:17PM 2 Mr. Miske.

01:17PM 3 MR. INCIONG: Thank you, Your Honor.

01:17PM 4 BY MR. INCIONG:

01:17PM 5 Q How did you -- or how do you know Mr. Miske, sir?

01:17PM 6 A We grew up in the same town.

01:17PM 7 Q What town -- what town is that.

01:17PM 8 A Waimanalo.

01:17PM 9 Q That's here on the island of Oahu?

01:17PM 10 A Yes.

01:17PM 11 Q For members of the jury that are from our neighbor islands

01:17PM 12 who may not be familiar, could you describe where or what part

01:17PM 13 of the island that is?

01:17PM 14 A On the east side of the island, small town, one road, one

01:17PM 15 stoplight, one blinking light.

01:17PM 16 Q About how old were you when you met Mr. Miske?

01:17PM 17 A I was in my teens.

01:17PM 18 Q What year were you born?

01:17PM 19 A '83.

01:17PM 20 Q So this would have been in the mid to late '90s?

01:17PM 21 A Yes.

01:17PM 22 Q Do you recall how you first became -- knew Mr. Miske or

01:17PM 23 how you got to meet him?

01:17PM 24 A Being from a small town, you -- you really hear about

01:18PM 25 people before you -- before you meet them. And, yeah, we just

01:18PM 1 heard about each other. We started meeting each other
01:18PM 2 through -- through mutual friends and created a relationship
01:18PM 3 from that.

01:18PM 4 Q Okay. So what was one of the first things that you
01:18PM 5 noticed or knew about Mr. Miske growing up in Waimanalo?

01:18PM 6 A He always had -- he always had nice -- nice things, nice
01:18PM 7 cars, nice -- nice bikes, old school cars. He always had nice
01:18PM 8 stuff.

01:18PM 9 Q Okay. Did that catch your attention?

01:18PM 10 A Yes.

01:18PM 11 Q Now, how would you -- well, before I ask you that, was
01:18PM 12 Mr. Miske your age?

01:18PM 13 A No.

01:18PM 14 Q Older than you, younger than you?

01:18PM 15 A Older.

01:18PM 16 Q How much older?

01:18PM 17 A About ten years.

01:18PM 18 Q So if you were in your teens when you first met him, then
01:19PM 19 he was in his 20s?

01:19PM 20 A Yes.

01:19PM 21 Q What were some of the kind of earliest conversations that
01:19PM 22 you recall having with Mr. Miske?

01:19PM 23 A I used to -- when I was younger, he always used to -- he
01:19PM 24 used to school me. You know, like I was -- I was young. I was
01:19PM 25 doing -- I was doing a lot of little petty crimes, stealing

01:19PM 1 from tourists, robbing tourists at the beach, you know.

01:19PM 2 And when I used to talk to him, he used to be like,

01:19PM 3 "'eh, why you -- why you keep doing these little -- little

01:19PM 4 petty crimes here and there, you know. Trying to target people

01:19PM 5 that matter, you know, like he always used to -- he used to

01:19PM 6 always like shoot -- shoot that kind of stuff to me.

01:19PM 7 Q Okay. So what did -- what did you understand him to mean

01:19PM 8 when he said "target people that matter"? What are people that

01:19PM 9 matter?

01:19PM 10 A Target people that -- that you don't gotta -- I don't

01:20PM 11 gotta -- I don't gotta rob somebody every day for a little bit

01:20PM 12 of money, you know. Target bigger drug dealers that giving

01:20PM 13 smaller drug dealers some -- some drugs and like that, yeah.

01:20PM 14 Q So the advice was these people had more money?

01:20PM 15 A Yes.

01:20PM 16 Q Okay. Was there any other advantage to -- you said

01:20PM 17 robbing drug dealers, any other advantage to robbing that kind

01:20PM 18 of target?

01:20PM 19 A Yes.

01:20PM 20 Q What was that?

01:20PM 21 A He told me like -- you know, like drug dealers, they're

01:20PM 22 not going to really call the cops, so, you know. They cannot

01:20PM 23 really cause heat like -- like robbing tourists or robbing cars

01:20PM 24 and shit like that.

01:20PM 25 Q So let me go back a little bit in time. You said that you

01:20PM 1 were doing petty crimes at a young age, correct?

01:20PM 2 A Yes.

01:20PM 3 Q How young are we talking about?

01:20PM 4 A Young. I was doing it at a -- at a young age. Elementary
01:20PM 5 school.

01:21PM 6 Q Okay. Tell the jury about your -- your home life and your
01:21PM 7 family life at that time.

01:21PM 8 A Oh, family life wasn't -- wasn't great. Wasn't -- I like
01:21PM 9 to say I raised myself. They never -- my parents never told me
01:21PM 10 I was doing wrong or I was doing right, you know, whatever. I
01:21PM 11 was made to make decisions on my own and -- and figure out
01:21PM 12 basically if that was right or wrong on my own.

01:21PM 13 Q Okay. Did the decision whether you go to school
01:21PM 14 regularly, was that left up to you?

01:21PM 15 A Yes.

01:21PM 16 Q And how did you decide?

01:21PM 17 A I mean they would -- they would send me to school, but I
01:21PM 18 was -- I would go to school, and I just knew school wasn't for
01:21PM 19 me. You know, so I -- I would constantly leave school
01:21PM 20 basically every day, you know. And I would find out like the
01:21PM 21 only way your parents would find out is if the school calls
01:22PM 22 home, and at that time it was answering machines. So all you
01:22PM 23 had to do was go home, erase the message from the school, and
01:22PM 24 they would never find out.

01:22PM 25 Q So your parents were not aware you are skipping school

01:22PM 1 regularly?

01:22PM 2 A No.

01:22PM 3 Q What were you doing when you were supposed to be in school
01:22PM 4 and you were -- you were not there?

01:22PM 5 A I mean, I started off innocent. That was probably the
01:22PM 6 worst thing I was doing at the time then. I was going to the
01:22PM 7 beach. I was cutting school, going to the beach. And so in my
01:22PM 8 teens started off like that. I was going to the beach just to
01:22PM 9 go to the beach, boogie board.

01:22PM 10 Q Okay. But did that change?

01:22PM 11 A Yes.

01:22PM 12 Q What did that change to?

01:22PM 13 A Well, I was at the beach. I always -- I used to play
01:22PM 14 sports at that time, so I was used to -- even if I was playing
01:22PM 15 sports, I was still watching people. Like people in my
01:22PM 16 neighborhood was stealing from cars, stealing from tourists and
01:23PM 17 everything like that.

01:23PM 18 So when I started going to the beach, even though my
01:23PM 19 attention was just to go to the beach, I started looking like,
01:23PM 20 Hey, these tourists are just leaving their bags, I can go over
01:23PM 21 and steal stuff from them, you know. And progressed from
01:23PM 22 there. I started going to the beach just to steal from them at
01:23PM 23 that point, you know. And I was still young. I'm not even --
01:23PM 24 you know, I'm not even in my teens yet, and that's what --
01:23PM 25 that's what it progressed to.

01:23PM 1 Q Okay. So going to the beach became not just going to the
01:23PM 2 beach, you were going there to steal from tourists.

01:23PM 3 A Yeah. Not even going to the beach to -- to bodysurf and
01:23PM 4 to -- you know. At that time I never had money, you know, so I
01:23PM 5 was -- we was grabbing -- we was going to boogie board, but I
01:23PM 6 never have one boogie, so I had to steal a tray from
01:23PM 7 MacDonald's or something and use that. So when I started
01:23PM 8 stealing from tourists, I could buy my own board, I could buy
01:23PM 9 fins, buy my friends some stuff. I was young.

01:24PM 10 Q Okay. Did it stop there or did that lead to bigger
01:24PM 11 things?

01:24PM 12 A Yeah, from there it just got worse from there.

01:24PM 13 Q Okay. What do you mean by "worse"? Tell us what things
01:24PM 14 you're talking about.

01:24PM 15 A I started stealing -- I started stealing cars from there.
01:24PM 16 I started going to -- I started traveling to different --
01:24PM 17 different beaches, stealing from houses, robbing houses. Yeah,
01:24PM 18 just -- just got worse from there.

01:24PM 19 Q Okay. Now, was this about the time that -- then that you
01:24PM 20 met Mr. Miske that you referenced?

01:24PM 21 A Yes.

01:24PM 22 Q So how would you describe your relationship with Mr. Miske
01:24PM 23 after you had gotten to know him and he had given you this --
01:24PM 24 this advice about picking people that mattered?

01:24PM 25 A Like I say, our relationship started off great, you know.

01:24PM 1 I was -- I was somebody. He was somebody I looked up to. You
01:25PM 2 know, he had -- even though it was -- was negative feedback to
01:25PM 3 you guys, to me my life revolved around that, you know. I
01:25PM 4 mean, around committing crimes, you know. My -- my ideal of
01:25PM 5 doing good throughout my whole life, all up until I caught this
01:25PM 6 case, was -- was just not getting caught. You know. So that
01:25PM 7 was my -- that was my -- that was mindset, you know, pretty
01:25PM 8 much throughout my whole life.

01:25PM 9 Meeting Mike, yeah, I mean it was great. Our
01:25PM 10 relationship was great. Every time I seen him, we had mutual
01:25PM 11 friends. We had great -- I had great times with him. Great,
01:25PM 12 great times with him, you know. Went from talking -- we went
01:25PM 13 from just knowing mutual friends to talking, to talking more,
01:26PM 14 to talking more, hanging out more. He would invite me to his
01:26PM 15 house. Let me drive his cars. Let me ride his bikes. You
01:26PM 16 know. Sleep on his couch.

01:26PM 17 I used to -- at his house, I used to go over there. I
01:26PM 18 mean it was simple. He had frozen rice balls in his freezer,
01:26PM 19 we used to pop them in the microwave, put some canned goods on
01:26PM 20 top of that. I mean always talking, always -- always joking,
01:26PM 21 always laughing. But our conversations started getting deeper
01:26PM 22 and deeper.

01:26PM 23 Q Okay. So at this point, I mean how would you describe
01:26PM 24 your relationship then? Was he like a big brother to you, a
01:26PM 25 father figure, a close friend? How would you describe it?

01:26PM 1 A I would say -- I would say all of the above. You know.

01:26PM 2 Q Is it hard for you testifying here today?

01:27PM 3 A Yes. Very hard.

01:27PM 4 Q Tell the jury why.

01:27PM 5 A I was -- I was -- I knew this guy a long, long time. Very

01:27PM 6 close with him, very close with -- with his son. Yeah, it

01:27PM 7 was -- it was hard. I never thought it was going to be this

01:27PM 8 hard, but it's even harder now that I'm actually sitting here.

01:27PM 9 Q Okay. You said that --

01:27PM 10 A It's hard -- hard to testify against somebody that -- that

01:27PM 11 you was so close to for very, very long time.

01:27PM 12 Q You're 40 now, you said, right?

01:27PM 13 A Forty, yes.

01:27PM 14 Q So you met him in your teens, so you've known him at least

01:27PM 15 25 years. Is that accurate?

01:27PM 16 A Yes.

01:27PM 17 Q And you said one of the things that stood out to you or

01:27PM 18 made you notice Mr. Miske was he always had nice things.

01:27PM 19 A Yes.

01:27PM 20 Q So what do you mean by nice things?

01:28PM 21 A Like I said earlier, he always had -- always had nice

01:28PM 22 stuff. He always had the nicest cars, the nicest -- the nicest

01:28PM 23 trucks, the nicest bikes. You know, I seen him with a nice

01:28PM 24 car, I wanted the same car. I seen him with a Mercedes, I

01:28PM 25 wanted one Mercedes. I seen him with a bike -- I am not

01:28PM 1 talking bicycle. I'm talking like -- like choppers, you know,

01:28PM 2 like real nice bikes.

01:28PM 3 Q Motorcycles?

01:28PM 4 A Motorcycles, yeah.

01:28PM 5 Q Did you ever see Mr. Miske carrying large quantities of

01:28PM 6 cash, money?

01:28PM 7 A Yeah, on him he always had -- he always had wads of cash

01:28PM 8 on him, like at least a wad of cash on him. He keep one wad of

01:28PM 9 cash, I would say that big. Big bills in the middle. He get

01:28PM 10 his license, couple of cards or whatever he was carrying,

01:28PM 11 rubber band around the -- around the stack like that. At all

01:29PM 12 times until -- as long as I known him, I always seen him with

01:29PM 13 that till -- till the last days that I seen him.

01:29PM 14 Q Now, would you say that when you became this -- you know,

01:29PM 15 your relationship got to this level of closeness that you

01:29PM 16 described, did your outlook on life change in any way?

01:29PM 17 A Yes.

01:29PM 18 Q Tell the jury how.

01:29PM 19 A I was just -- at that time I was being -- I was -- I was

01:29PM 20 open to listening and doing more and more worse shit. You

01:29PM 21 know. I don't know -- I don't know how else for say 'em. I no

01:29PM 22 like swear in front of you guys, but --

01:29PM 23 Q Okay. So you said before you were looking basically --

01:29PM 24 what was important to you was not to get caught, correct?

01:29PM 25 A Yes. That was -- that was me telling myself I'm doing

01:30PM 1 good by just not getting caught. To me not getting caught was
01:30PM 2 actually doing good in life. You know. Like that was -- that
01:30PM 3 was how messed up my -- my thinking was.

01:30PM 4 Q So when he counseled you and told you that you should pick
01:30PM 5 these people that mattered, did you view that as being good --
01:30PM 6 good advice as a way not to get caught?

01:30PM 7 A Yes.

01:30PM 8 Q So did you ever follow that advice and actually carry out
01:30PM 9 any crimes against drug dealers that he -- he recommended?

01:30PM 10 A Yes.

01:30PM 11 Q On more than one occasion?

01:30PM 12 A Yeah, I cannot -- I cannot be specific. It was a long
01:30PM 13 time -- long, long time ago.

01:30PM 14 Q Okay. So without knowing any specifics, but you did --
01:30PM 15 you did do that at that time?

01:30PM 16 A Yeah, yeah. But I was -- I was doing -- I was doing a lot
01:31PM 17 of stuff during that time, so...

01:31PM 18 Q So during that period were you aware of -- was Mr. Miske
01:31PM 19 employed? Did he have any businesses he was running at the
01:31PM 20 time?

01:31PM 21 A Well, he was -- he was working at the -- he was working at
01:31PM 22 the movies, but he had on -- he had -- he had a few shops. He
01:31PM 23 had a tint shop, and then after that he had -- he had Kama'aina
01:31PM 24 fumigation termite.

01:31PM 25 Q Kama'aina Termite and Pest Control?

01:31PM 1 A Yes.

01:31PM 2 Q Did that come later or was that --

01:31PM 3 A Yes.

01:31PM 4 Q -- or did that exist at the time you met him?

01:31PM 5 A No, no, just...

01:31PM 6 Q Okay. So when you say working for the movies, explain

01:31PM 7 what that means to the jury.

01:31PM 8 A Working transportation like moving equipment to where --

01:31PM 9 to where they film at and -- yeah, stuff like that. Transport

01:32PM 10 anything that they got to do at the -- on the movie sets.

01:32PM 11 Q Is this a union job?

01:32PM 12 A Yes.

01:32PM 13 Q And the tint shop, you said he was running a tint shop?

01:32PM 14 A Yes.

01:32PM 15 Q You mean window tinting on vehicles?

01:32PM 16 A Yes.

01:32PM 17 Q Do you know where that was located?

01:32PM 18 A Queen Street.

01:32PM 19 Q In Honolulu?

01:32PM 20 A Yes.

01:32PM 21 Q So opposite side of Waimanalo where -- where you grew up.

01:32PM 22 A Yes, Downtown area by Ward -- by that Ward area right

01:32PM 23 down -- I don't know if you guys are familiar with that, but

01:32PM 24 used to have Sports Authority, McDonald's, and that area.

01:32PM 25 Q Okay. All right.

01:32PM 1 A One gas station.

01:32PM 2 Q So after -- after you committed these robberies of the
01:32PM 3 drug dealers, did you tell Mr. Miske you had done those or was
01:32PM 4 he aware that you were -- you had followed his advice?

01:32PM 5 MR. KENNEDY: Objection on relevance, Your Honor.

01:32PM 6 THE COURT: Overruled.

01:32PM 7 Go ahead.

01:32PM 8 THE WITNESS: Huh?

01:32PM 9 THE COURT: Go ahead, you can answer the question.

01:32PM 10 THE WITNESS: Oh. What was the question again?

01:32PM 11 BY MR. INCIONG:

01:32PM 12 Q Was Mr. Miske aware, either from you telling him or
01:33PM 13 otherwise, that you had been robbing drug dealers now that he
01:33PM 14 had recommended it?

01:33PM 15 MR. KENNEDY: Objection. Hearsay.

01:33PM 16 THE COURT: Overruled. Go ahead.

01:33PM 17 THE WITNESS: Say that again now.

01:33PM 18 BY MR. INCIONG:

01:33PM 19 Q Did Mr. Miske know that you were robbing these drug
01:33PM 20 dealers as you had discussed with him?

01:33PM 21 A Yes.

01:33PM 22 Q Did you have discussions with him then about more serious
01:33PM 23 crimes after that?

01:33PM 24 A Yes.

01:33PM 25 Q Tell us about that.

01:33PM 1 A So I would say around -- around those times right there,
01:33PM 2 we were already -- we were already in the 2000s, right? So I
01:33PM 3 think our relationship grew, it was at the strongest I think
01:33PM 4 has ever been. And this is in the 2000s already.

01:33PM 5 So he's -- at that point he's fully got my -- whatever
01:33PM 6 he said was -- was right, you know, even if it was wrong,
01:33PM 7 whatever he said was right in my eyes. So he would -- he would
01:34PM 8 shoot stuff to me like, Hey, what you think about -- what you
01:34PM 9 think hitting a home run or something like that, you know. And
01:34PM 10 saying "home run" is referring to -- to killing somebody. You
01:34PM 11 know. And I would look at him, and at that time I was like,
01:34PM 12 Why not? You know. So...

01:34PM 13 Q Were you surprised that he asked you that?

01:34PM 14 A No.

01:34PM 15 Q Did you know immediately what he meant by the term, quote,
01:34PM 16 home run?

01:34PM 17 A Yes.

01:34PM 18 Q How did you know what he meant by home run?

01:34PM 19 A Like I said, I think our -- our relationship was the
01:34PM 20 strongest it has ever been at that -- at that point right
01:34PM 21 there. You know, like he can -- he can tell me one word, and I
01:34PM 22 would -- I would figure out the terms that he was using, and
01:35PM 23 vice versa with him too.

01:35PM 24 Q Did Mr. Miske use similar terms or analogies with you like
01:35PM 25 home run?

01:35PM 1 A Yes, he would -- I mean he would -- in terms -- in terms
01:35PM 2 of baseball, first base. Hey, first base somebody, knocking
01:35PM 3 somebody out. Second base, bat somebody down. Third base,
01:35PM 4 they just redline them, put them in the hospital, don't kill
01:35PM 5 'em. You know, that was phrases that -- that he would use.
01:35PM 6 He -- and when he used first, second, or third or fourth
01:35PM 7 base -- I mean home run, that would be the meaning of that, of
01:35PM 8 those terms.

01:35PM 9 Q So when you answered Mr. Miske, Yeah, why not, if you were
01:35PM 10 willing to do a home run, what was his reaction?

01:35PM 11 A He got -- he got all excited. He got excited. He was --
01:35PM 12 he was happy to hear that I was -- that I was agreeing with
01:35PM 13 him.

01:36PM 14 Q Did your relationship change after that?

01:36PM 15 A Yes.

01:36PM 16 Q How so?

01:36PM 17 A Huh?

01:36PM 18 Q How did your relationship change after that specific
01:36PM 19 question and answer?

01:36PM 20 A It got -- just got -- continued to get stronger.
01:36PM 21 Continued to grow, continued to -- yeah, we was having deep
01:36PM 22 conversations, you know, at that -- during those times. But...

01:36PM 23 Q So at that point was the home run or any of the bases, was
01:36PM 24 that just conversation or did he actually ask you to carry out
01:36PM 25 anything with any specific person?

01:36PM 1 A Oh, during the time -- this is long time ago. So -- so
01:36PM 2 towards that point he always hated -- so I can remember this --
01:36PM 3 this really all I can remember from those times, you know, but
01:36PM 4 he always hated Joe Boy. You know, this -- this --
01:36PM 5 Q Who is Joe Boy?
01:36PM 6 A This guy from our hometown, he live in the same town as
01:37PM 7 us, Joe Boy Tavares. You know.
01:37PM 8 Q Did you know who Joe Boy Tavares was?
01:37PM 9 A Yes.
01:37PM 10 Q Why did Mr. Miske say he hated Joe Boy Tavares?
01:37PM 11 A This is -- this is a long time ago. He just always hate
01:37PM 12 -- that's somebody that he just always hated. Ever since I
01:37PM 13 could remember, he just hated this guy. Might have many
01:37PM 14 reasons. If -- if I can think of one, him saying that -- that
01:37PM 15 he was fooling around with one of his girlfriends or something
01:37PM 16 like that, you know.
01:37PM 17 Q Did he ask you to take any action regarding Joe Boy
01:37PM 18 Tavares?
01:37PM 19 A Yeah, he told me -- he used to tell me -- this is long
01:37PM 20 time ago, so I'm phrasing as best as I can. But he used tell
01:37PM 21 me, 'eh, you always in Nalo. Which is our hometown. I'm
01:37PM 22 always there.
01:37PM 23 This guy goes chicken fights every week, he got to
01:38PM 24 come home. There's only few roads that he can come home
01:38PM 25 through. You know. Keep -- keep an eye on him, you know. Let

01:38PM 1 me know what he -- hey, he go over here, he come home this way

01:38PM 2 every time. You know, I see him over here, let him know.

01:38PM 3 Stuff like that.

01:38PM 4 Q So when you say "Nalo," you are referring to Waimanalo.

01:38PM 5 A Yes.

01:38PM 6 Q That's a nickname for Waimanalo.

01:38PM 7 A Yeah, that's the last -- that's the last four letters

01:38PM 8 of -- of where we from.

01:38PM 9 Q So you were basically keeping tabs on Joe Boy Tavares for

01:38PM 10 him.

01:38PM 11 A Yes.

01:38PM 12 Q Would you report back to him and tell him where you had

01:38PM 13 seen him or what --

01:38PM 14 A Yeah, I would -- I would report -- I will tell him some

01:38PM 15 stuff. I would tell him, Yeah, I seen him over here. He

01:38PM 16 mainly take this road, you know, stuff like that. What he was

01:38PM 17 driving. And then he would come back to me telling me like,

01:38PM 18 Hey, this is where he works and -- yeah.

01:38PM 19 Q Okay. So during that period, the late '90s going up to

01:39PM 20 the early 2000s, was it anything ever more than that, than just

01:39PM 21 keeping tabs?

01:39PM 22 A No, we just -- we just -- we close, but he just -- you

01:39PM 23 know what I mean, he just testing the waters at that time to

01:39PM 24 see how far we can go with that.

01:39PM 25 Q Okay.

01:39PM 1 THE COURT: Mr. Inciong, we're about ten minutes over.
01:39PM 2 Would now be a good time?
01:39PM 3 MR. INCIONG: That's fine, Your Honor.
01:39PM 4 THE COURT: All right. So we are about 1:40 in the
01:39PM 5 afternoon, and at this point our 17-person jury I think will
01:39PM 6 recess for the day. Tomorrow morning we'll start at 8:30.
01:39PM 7 Mr. Miller will retake the stand on direct examination.
01:39PM 8 So as we go to break, I'll remind each of you once
9 again to refrain from discussing the substance of this case
10 with anyone, including each another; to refrain from accessing
11 any media or other accounts of this case that may be out there;
12 and then finally, please do not conduct any independent
13 investigation into the facts, persons involved, or
01:39PM 14 circumstances.
01:39PM 15 We'll see you tomorrow morning at 8:30.
01:40PM 16 (Proceedings were concluded at 1:40 p.m.)
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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, March 28, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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